

22412

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No.: 2012-CP-10-3857 and 2012-CP-10-3858

Appellate Case No.: 2015-001644

Shipwatch Condominium Association, Inc., ...Appellant,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
individually; Terrence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C.
Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF
Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are Respondents

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of
condominium units in the horizontal property regime known as Shipwatch Condominiums,
Appellants,

v.

Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually; Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy,
individually; Terrence J. McKelvey; GlassTec, Inc.; Sonneborn, Inc.; EFCO Corp.; W.C.
Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; BASF
Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually, are Respondents

ORIGINAL

RECEIVED

DEC 29 2015

SC Court of Appeals

**RECORD ON APPEAL
VOLUME II of III
PAGES 448 - 761**

R. Patrick Flynn
Robertson Hollingsworth & Flynn, LLC
177 Meeting St., Suite 300
Charleston, South Carolina 29401
(P) (843) 723-6470
ATTORNEY FOR APPELLANTS

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901
(P) 843-524-1116
ATTORNEYS FOR GLASSTEC, INC.

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun St., Suite 400
Charleston, SC 29401
(P) 843-266-8237
**ATTORNEYS FOR SISNROY
ENGINEERING, LLC AND ROBERT G.
SISNROY, INDIVIDUALLY**

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550
AND

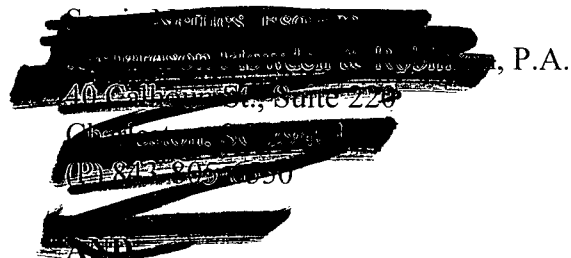
J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
(P) 843 723-0185
**ATTORNEYS FOR FIRST
EXTERIORS, LLC**

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
(P) 843-576-2800
**ATTORNEY FOR CAROLINA
CONCRETE SYSTEMS, INC.**

Trent Kernodle, Esquire
Kernodle Coleman
914 Folly Road, Suite 2
Charleston, SC 29412
(P) 843-795-7800
**ATTORNEY FOR BASF AND
SONNEBORN**

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood
P.O. Box 893
Charleston, SC 29402
(P) 843-577-6726
**ATTORNEY FOR EFCO CORP. AND
W.C. JOHNSTON ARCH. SALES, INC.**

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
(P) 577-7700
**ATTORNEY FOR GARY FREEMAN,
ARCHITECT AND GARY FREEMAN,
INDIVIDUALLY**

A large block of text is completely redacted with heavy black ink. The redaction covers several lines of text, including what appears to be a name, a firm name, an address, and a phone number. The only legible text within the redacted area is "P.A." at the end of the first line.



Amanda R. Maybank, Esquire

~~Marshall A. Earnhart, Esquire~~

Maybank Law Firm, LLC

P.O. Box 12579

Charleston, SC 29422

(P) 843-766-8101

**ATTORNEYS FOR CHARLESTON
GLASS COMPANY, INC.**



INDEX

Orders

1. Form 4 Order dated October 27, 2014 - Carolina Concrete Systems, Inc.'s
Motion for Summary Judgment Granted in Part.....1
2. Order dated Nov. 24, 2014 Denying Plaintiffs' Mot. for Rehearing and/or Reconsideration. ..2
3. Amended Consent Scheduling Order Filed April 7, 2014 3
4. Order of Court of Appeals dated July 2, 2015 and Remittitur dated July 22, 2015 7
5. Formal Written Order Granting Partial Summary Judgment dated July 28, 2015 19
6. Letter from Clerk of Court of Appeals of Aug. 14, 2015 re: Consolidation of Appeals 33

Pleadings

7. Plaintiffs' Summons and Complaint in both Shipwatch and Mendiondo cases 36
8. Carolina Concrete Systems' Notice of Motion and Motion for Summary Judgment 78
9. Carolina Concrete Systems' Mem. in Support of Motion for Summary Judgment.....82
10. Plaintiffs' Response in Opp. to Carolina Concrete Sys. Motion for Summary Judgment...136
11. Plaintiffs' Motion for Rehearing and/or Reconsideration of Order Granting Partial
Summary Judgment to Carolina Concrete Systems 191
12. Plaintiffs' Supplemental Response in Opposition to Carolina Concrete Systems
Motion for Summary Judgment, and Memorandum in Support of Plaintiffs'
Motion for Rehearing & Reconsideration.....196
13. Plaintiffs' Notice of Appeal dated December 30, 2014.....290
14. Plaintiffs' Amended Notice of Appeal 291
15. Charleston Glass Company's Motion & Memorandum for Summary Judgment 292
16. EFCO Corp. and WC Johnston Arch. Sales' Motion for Summary Judgment 448
17. EFCO & WC Johnston Mem. in Support of Motion for Summary Judgment 493

18. Appellants' Return to Acrocrete & Glasstec's Motion to Dismiss Appeal	507
19. Notice of Appeal dated July 28, 2015.....	511
20. GlassTec, Inc.'s Motion for Summary Judgment	553
21. GlassTec, Inc.'s Memorandum in Support of Motion for Summary Judgment	557
22. Carolina Concrete Systems, Inc.'s Answer and Cross-claims dated March 28, 2013	597
23. BASF's Answers to Plaintiffs' Complaints in Shipwatch and Mendiondo cases	609

Transcripts

24. Transcript of Hearing on Summary Judgment.....	634
25. Linda Jernigan Deposition Transcript Excerpts: pp. 25, 27, 35-39, 45, 73-74, 97, 219, 230, 307, 330-333, 335 & 411-523.....	642
26. Fred Trombino Deposition Transcript Excerpts: pp. 37-38, 43-44, 132-33	693
27. Arnie Schaewe Deposition Transcript Excerpts: pp. 19, 35, 37, 59-60, 78-79	700
28. Greg Isaacs Deposition Transcript Excerpts: pp. 10-11, 251-78, 301-15, & 541-49	708
29. Jeff Miller Deposition Transcript Excerpts: pp. 55, 347, 559-79, & 609-11.....	730
30. Peter Sherratt Deposition Transcript Excerpts: pp. 86, 93-142	744

Exhibits and Other Materials or Documents

31. Shipwatch Board Meeting Minutes, April 1, 2005.....	762
32. Shipwatch Board Meeting Minutes, September 16-17, 2005	766
33. Shipwatch Board Meeting Minutes, March 18, 2006.....	771
34. Shipwatch Board Meeting Minutes, Sept. 12-13, 2008 Jernigan Dep. Exh.108	783
35. Building Report, March 9, 2007 (Jernigan Dep. Exh. 96).....	793
36. Sisroy's Memorandum to Lester Griffin of Shipwatch dated January 7, 2004	795
37. Sisroy Report dated July 10, 2006.....	798

38. Sisroy Roof Flashing Installation Defic. & Cladding Failure Inv. of Aug. 23, 2008	803
39. Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007.....	826
40. Carolina Concrete Systems Pay Application dated April 25, 2004	829
41. Facsimile from Bob Wiggins to Shipwatch dated February 2, 2005	835
42. Carolina Concrete Systems Inspection Report dated May 9, 2007.....	837
43. Carolina Concrete Systems Inspection Report dated February 5, 2009.....	839
44. Carolina Concrete Systems Proposal dated June 3, 2003	842
45. Carolina Concrete Systems Contract with Shipwatch dated November 5, 2002.....	845
46. Carolina Concrete Systems Contract with Shipwatch dated September 22, 2003	852
47. Carolina Concrete Systems Contract with Shipwatch dated December 19, 2008	860
48. Carolina Concrete Systems Proposal dated April 26, 2010	867
49. Carolina Concrete Systems Contract with Shipwatch dated September 1, 2010	869
50. Glasgow, Inc.'s 2003 Contract.....	880
51. Glasgow, Inc.'s 2004 Contract.....	903
52. Plaintiffs' Repair Scope produced by SKA	926
53. Plaintiffs' Repair Contract produced by Pro-Tec	931
54. January 5, 6, 12 and 13, 2015 emails between R. Patrick Flynn, Esq., R. Britton Kelly, Esq., and the Charleston County Clerk of Court, re: Hearings for Motions for Summary Judgment and Impact of Appeal	962
55. April 14, 2015 email of R. Patrick Flynn, Esquire to Charleston County Clerk of Court Advising of Ruling of Judge Dennis on Question of Stay	969
56. Master Deed of Shipwatch H.P.R. dated April 24, 1984 (Jernigan Dep. Exh. 142)	971
57. Affidavit of Greg Johnston with Exhibits	992
58. Elevations with notes by Isaacs re: window & door counts (Isaacs Dep Exh 57)	1024

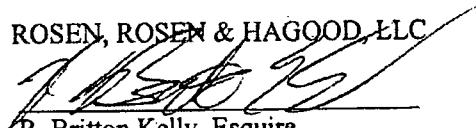
59. Carolina Concrete Systems Proposal of Sept. 6, 2007 (Jernigan Dep. Exh. 103)	1028
60. E-mail of Nov. 3, 2010 - Freeman to Wiggins & Jernigan (Jernigan Dep. Exh. 129)	1030
61. E-mail of Nov. 5, 2010 - Freeman to Wiggins & Jernigan (Jernigan Dep. Exh. 130)	1031
62. Fax of Nov. 11, 2010 - Charleston Glass to Wiggins re: Non-Impact Glass Products (Jernigan Dep. Exh. 132)	1032
63. E-mail of Nov. 12, 2010 - Freeman to Jernigan re: Non-Impact Glass Windows (Jernigan Dep. Exh. 133)	1033
64. E-mail exchange of Dec. 7, 2010 between Freeman and Shipwatch re: Sliding Glass Doors with Non-Impact Glass (Jernigan Dep. Exh. 134)	1035
65. Charleston Glass Company, Inc. Invoice dated October 22, 2003	1036
66. Charleston Glass Proposal dated January 7, 2004	1037
67. Charleston Glass Fax to Carolina Concrete Systems dated March 30, 2004.....	1038
68. Charleston Glass Invoices dated March 26, 2004 and October 14, 2004	1041
69. Charleston Glass Proposal for Doors dated Jan. 18, 2008 (Jernigan Dep. Exh. 139)	1043
70. GlassTec, Inc. Proposals to Shipwatch dated August 30, 2001	1044
71. GlassTec, Inc. Proposal to Shipwatch dated November 5, 2001	1047
72. GlassTec, Inc.'s Job Cost Ledger	1050
73. Letter of Jan. 25, 2004 from Weaver (GlassTec) to Griffin (Shipwatch).....	1058
74. Chart of "Shipwatch Townhouse Sliding Glass Doors Replaced" (Jernigan Dep. Exh. 140).....	1059
75. Plaintiffs' Expert Witness Disclosures to Respondent W.C. Johnston, Inc.	1060
76. South Carolina Sec'y of State Web Page re: incorporation date of Charleston Glass.....	1063
77. Certification of Counsel.....	1065
78. Certificate of Service of Record on Appeal.....	1067

Plaintiff claims in this case. The cross claims allege causes of action for (1) Negligence; (2) Breach of Warranty; (3) Breach of Contract; and (4) Indemnity. For the same and similar reasons that Plaintiff's claims fail, so do the cross claims of CCS. Therefore, the CCS claims should also be dismissed pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

In support of this motion, EFCO and WCJ rely upon the pleadings and matters filed in this action, memoranda of law to be submitted to the Court, subsequent Affidavits and documents, Plaintiff's expert witness designations (Exhibit A), and the following portions of depositions taken from witnesses, which are attached and marked as the Exhibits noted:

- (1) Jeff Miller, PE Deposition Transcript, Pages 347, 559-578; and 609-611 (collective Exhibit B);
- (2) Greg Isaacs, PE Deposition Transcript, Pages 301-315; and 541-549 (collective Exhibit C); and
- (3) Peter Sherratt, AIA Deposition Transcript, Pages 86, 93-142 (collective Exhibit D).

ROSEN, ROSEN & HAGOOD, LLC



R. Britton Kelly, Esquire

151 Meeting St Ste. 400 (29401)

P.O. Box 893

Charleston, S.C. 29402

Attorneys for Defendant EFCO

*Corporation & WC Johnston Architectural
Sales, Inc.*

Charleston, South Carolina
December 4, 2014

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) Case No. 2012-CP-10- 3857

Shipwatch Condominium Association, Inc.)

Plaintiff,)

vs.)

Carolina Concrete Systems, Inc.; Sisnroy)
Engineering, LLC; Robert G. Sisnroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonneborn, Inc.; Chimney)
Sweeps, Inc.; Low Country Chimneys, Inc.;)
EFCO Corp.; W.C. Johnston Architectural)
Sales, Inc.; Charleston Glass Company, Inc.;)
First Exteriors, LLC; Acrocrete, Inc.;)
BASF Corp.; Gary Freeman Architect, Inc.;)
Gary Freeman, individually;)

Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

**PLAINTIFFS' ANSWERS TO
GLASSTEC, INC.'S INTERROGATORIES
TO ALL PARTIES**

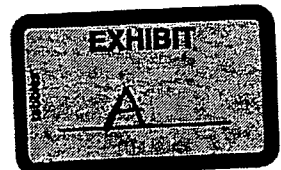
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2012-CP-10- 3858

Oscar Menciondo, individually and as)
representative of a class of similarly)
situated owners of condominiums units in)
the horizontal property regime known as)
Shipwatch Condominiums,)

Plaintiff,)

vs.)

Carolina Concrete Systems, Inc.; Sisnroy)
Engineering, LLC; Robert G. Sisnroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonneborn, Inc.; Chimney)



copies of documents obtained through discovery responses by various defendants in this matter, and that information will be made available at a mutually convenient time at the offices of Robertson Hollingsworth & Flynn, 177 Meeting Street, Suite 300, Charleston, South Carolina, 29401.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: None of the Plaintiffs' liability insurance policies provide such coverage for these claims.

4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case, state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

ANSWER:

SKA Consulting Engineers, Inc.
Jeffrey S. Miller PE
Manager, Building Solutions Group
4651 Charlotte Park Drive, Suite 150
Charlotte, NC 28214
(704) 424-9663

Mr. Miller and his colleagues at SKA Consulting Engineers have performed an engineering investigation into the damages present at the Shipwatch Condominiums, and are evaluating appropriate remedial measures relating to those damages. Information responsive to the sub-parts to the above Interrogatory including, but not limited to, locations of testing, methods, findings, and opinions, is included in the reports issued by Mr. Miller and SKA for this project, which reports are contained in the above-referenced CD containing Plaintiffs' file material. That CD was previously

served by response to Defendant Sisnroy's Requests for Production. Additionally, copies of Mr. Miller and SKA's file material have been provided to counsel pursuant to a subpoena earlier in 2013.

Peter Edwin Sherratt, AIA, Architect
The Sherratt Company
P.O. Box 5786
Hilton Head Island, SC 29938
(843) 689-9777

Mr. Sherratt is conducting an investigation into the damages present at the Shipwatch Condominiums, and is evaluating appropriate remedial measures relating to those damages. He has made several visits to the Shipwatch site since his engagement in or about June 2012. His most recent site visit to Shipwatch was on October 22, 2013 in which he observed conditions on the end walls and the beach-side wall of Building C. He has not produced any written reports at this time, but the requests for production will be supplemented upon receipt of any such reports.

Edward C. Porcher, P.E.
Stantec Consulting Services, Inc.
4969 Centre Pointe Drive, Suite 200
North Charleston, SC 29418

Mr. Porcher and Stantec are serving in a capacity as a non-testifying consulting expert witness for the Plaintiffs at this time.

Commercial Building Consultants, LLC ("CBC")
590 North Semoran Blvd.
Orlando, FL 32807

CBC is serving in a capacity as a non-testifying consulting expert witness for the Plaintiffs at this time.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts

EXHIBIT B

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

THE CONTINUATION OF THE DEPOSITION OF JEFF MILLER was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Thursday, the 1st day of May 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, Charlotte, North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

EXHIBIT

Page 556 1 Q And you don't recall the substance of 2 that conversation? 3 A Unfortunately, no. 4 Q I guess you said earlier that there was 5 nothing substantive discussed. Is that correct? 6 A I probably said that, yes. 7 Q Sitting here today, you can't recall 8 anything that you-all talked about yesterday. Is 9 that correct? Do you think you talked about the 10 Shipwatch project? 11 A Obviously. The conversation was meant to 12 be kind of an update prior to depositions. And 13 obviously, I relayed to Pat that I had a hurt back 14 and I was doped up. And I know he was going, I 15 believe, through maybe some questions that the 16 attorneys may be asking. But beyond that, I don't 17 remember. A lot of talking. I probably said one or 18 two words. 19 Q You didn't receive anything in writing or 20 any e-mails from Mr. Flynn? 21 A No. 22 Q Earlier in your prior deposition, 23 specifically referenced on page 432 of that 24 deposition, we talked about the process that took 25 place in the drafting of your affidavit, the back	Page 558 1 think I have any more questions for you at this 2 time. 3 MR. FLYNN: Janice, just for the 4 record, I believe he does have all the documents 5 that he needs. So I'm not aware of any additional 6 documents that I have that he would need. So when 7 he goes through them, if he can't find something, 8 I'm happy to provide it to him. But he has all the 9 reports that I'm aware of. 10 THE WITNESS: So there are no other 11 documents other than what was given to me like two 12 years ago? 13 MR. FLYNN: As far as I -- Yeah. 14 MR. WINTON: I didn't know if you 15 were testifying for him or what's going on here, 16 but -- 17 MR. FLYNN: I'm talking to you. 18 Because you asked the question about documents, and 19 I wanted to make sure you were aware for the record 20 that I've provided whatever documents he has. It 21 should be in his files. 22 MR. WINTON: Oh, relative to the 23 affidavit? 24 MR. FLYNN: No. Just whatever 25 documents that I have in my files, particularly
Page 557 1 and forth between you and Mr. Flynn and the use of 2 handwritten notes by you on a pdf document that you 3 believe was attached and sent back and forth via 4 e-mail. Do you recall that testimony? 5 A Yes. 6 Q I'll represent to you that I looked in 7 the documents, and I could have missed it, but I did 8 not find that correspondence or that pdf document 9 with handwritten notes. Is that something that you 10 may be able to more easily put your hands on or 11 something that you could put your hands on if you 12 looked within your database or a staff member could? 13 A It probably would have been easier to 14 find until Debbie gathered everything. I'm not sure 15 how she's messed up my files. But depending upon 16 the hard copy documents that she has assembled, that 17 may or may not be easy to find. 18 Q I won't tell Debbie you threw her under 19 the bus today, but I'm going to go ahead this 20 afternoon since we probably have some time, if we 21 could talk with her about the possibility of where 22 she thinks it might be, and I'll look with her for 23 that document. Is that acceptable? 24 A That's fine. 25 MR. WINTON: Mr. Miller, I don't	Page 559 1 relating to Mr. Sisroy. To my knowledge, I've 2 provided everything that he needs. I'm not aware of 3 anything additional that he needs at this time. 4 MR. WINTON: Understood. 5 THE WITNESS: That will be easier 6 then. I've got a certain amount of papers to 7 review. 8 (Lunch recess taken.) 9 E X A M I N A T I O N 10 BY MR. KELLY: 11 Q Mr. Miller, we're back from lunch. Are 12 you ready to proceed? 13 A Yes, sir. 14 Q My name is Britt Kelly. I represent W.C. 15 Johnston Architectural Sales and EFCO Corporation in 16 this case. I assume you're familiar with EFCO? 17 A I am familiar with both, yes. 18 Q And you know Greg Johnston with W.C. 19 Johnston Architectural Sales? 20 A I know him well, yes. 21 Q Do you hold any opinions relating to W.C. 22 Johnston Architectural Sales' involvement in the 23 Shipwatch project? 24 A I don't -- Say that question again. 25 Q Do you hold any opinions in this case

26 (Pages 556 to 559)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 560 1 related to any fault of W.C. Johnston Architectural 2 Sales for the damages or the repair work that you 3 have specified at the project? 4 A Well, I guess the best way to answer the 5 question is that obviously we had EFCO 6 non-impact-rated doors and windows improperly 7 installed on this project. And to what 8 responsibility W.C. Johnston or EFCO had regarding 9 those particular units being put into this building 10 when they weren't supposed to is kind of a question 11 mark. 12 Q Let me try to make sure I fully 13 understand that. So you do not currently hold any 14 opinions relating to any fault of W.C. Johnston 15 Architectural Sales or EFCO may have relating to the 16 installation of non-impact-rated glass products in 17 the buildings at Shipwatch? 18 A Well, I think I said I don't have the 19 information to thoroughly state -- You know, I don't 20 know what W.C. Johnston or EFCO's role was in the 21 project that would place liability on them or not on 22 them. All I know is we've got an inferior, improper 23 code, non-code compliant product that was put in 24 when it shouldn't have been. 25 Q You realize you've been designated by Mr.	Page 562 1 times, and I'll give you the same answer. Until I 2 have a chance -- 3 Q Yes, sir. That question calls for a 4 yes-or-no answer. Can you please give me a 5 yes-or-no answer? 6 A I don't have an answer. I can give you 7 an answer once I review the documents. 8 Q Do you refuse to answer my question with 9 a yes or no? 10 A I think I said will be glad to provide 11 the answer once I have documents to be able to form 12 an opinion to give you a yes-or-no answer. I cannot 13 give you a yes-or-no answer now. I know what your 14 question is. You've said it ten times. Keep saying 15 it. We'll keep going over the same thing. 16 Q You don't have to read too much into it. 17 It's simply a question of do you currently hold an 18 opinion as to whether EFCO or W.C. Johnston 19 Architectural Sales did something improper that led 20 to the installation of non-impact-rated windows and 21 doors in the Shipwatch buildings? 22 A (No response.) 23 MR. ROOT: You're not going to 24 respond to him? 25 THE WITNESS: I've already responded
Page 561 1 Flynn's office as an expert witness for the 2 plaintiffs in this case? 3 A Yes. 4 Q And this case has been pending for a 5 couple of years now? 6 A Whatever the time frame, yes. 7 Q As we sit here today, do you hold any 8 opinions that W.C. Johnston Architectural Sales or 9 EFCO did anything improper that resulted in the 10 installation of non-impact-rated glass in the 11 buildings at Shipwatch? 12 A I think you just asked me that question. 13 Q Yes, sir. You didn't answer it, so I 14 would like you to give me a direct answer. Do you 15 or do you not hold an opinion? 16 A I have not been able to form an opinion 17 without seeing the documentation associated with the 18 windows. Without reviewing the documentation, 19 everything is purely speculative until I see that. 20 Q So you do not hold an opinion as we sit 21 here today as to the fault, if any, of W.C. Johnston 22 Architectural Sales or EFCO related to the 23 installation of non-impact-rated windows or doors in 24 the buildings at Shipwatch? 25 A You can say your same sentence 20 more	Page 563 1 twice. I'm not going to respond again. 2 BY MR. KELLY: 3 Q Mr. Miller, did you understand my 4 question? 5 A I did. I responded to it twice. 6 Q A few minutes have gone by. Do you need 7 some additional time to consider my question to give 8 me a yes-or-no response? 9 A Yeah, I need to have the documents in 10 front of me for me to review, and then I'll answer 11 your question. 12 Q You need to have documents in front of 13 you to give me an answer as to whether or not you 14 hold an opinion related to those entities? 15 A I cannot provide an opinion until I 16 review the documents. 17 Q I'm not asking you to give me an opinion. 18 I'm asking you to tell me whether or not you have an 19 opinion. 20 A I've not reviewed any documents, so I 21 therefore have no opinion. How's that? 22 Q That is a perfectly fine answer. Thank 23 you. 24 A Thank you. 25 Q Do you have any opinions related to the

27 (Pages 560 to 563)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 564 1 performance of the EFCO products that are installed 2 in the Shipwatch buildings? 3 A I do. 4 Q What are those opinions, please? 5 A The EFCO products do not meet impact 6 resistance and therefore do not meet code. 7 Q Do you hold any other opinions regarding 8 the performance of the EFCO products that were 9 installed or are currently installed at the 10 Shipwatch buildings? 11 A That the sliding glass doors were 12 inadequately fastened. There were no jamb 13 fasteners. 14 Q Have you endeavored to assign fault to 15 anyone for the fact that there are no jamb fasteners 16 at the EFCO products you have observed at the 17 Shipwatch buildings? 18 A I have not assigned blame as of yet. 19 Q Do you hold any other opinions regarding 20 the performance of the EFCO products that were 21 installed in buildings C and D at Shipwatch or 22 currently installed at buildings A and B at 23 Shipwatch? 24 A Since I've not had a chance to review the 25 file, I am going to reserve that there may be other	Page 566 1 be published in my reports. 2 Q Did any of the water testing performed by 3 Sutton-Kennerly & Associates at the Shipwatch 4 buildings reveal failures with the EFCO products? 5 A I don't believe they did. 6 Q Are you aware of any failure of EFCO 7 products that has led to water intrusion at the 8 Shipwatch buildings? 9 A Through the actual EFCO units, I am not. 10 Q When Sutton-Kennerly & Associates first 11 designed a plan for remediating the issues it found 12 at buildings C and D at Shipwatch, did it intend to 13 reuse the EFCO products that were installed in those 14 buildings? 15 A That was one of the considerations that 16 we had, is to reuse those units, yes. 17 Q When that consideration was I guess still 18 an option or being considered as an option, did the 19 scope of work that Sutton-Kennerly & Associates 20 envision involve removing those windows or doors in 21 order to fix the other problems surrounding the 22 windows and doors? 23 A In that scenario, yes, it was envisioned. 24 That was one of the options that we looked at, if we 25 could get the windows and doors grandfathered in
Page 565 1 opinions. But for the time being, I'm going to say 2 no. 3 Q Sutton-Kennerly & Associates had water 4 testing performed at the Shipwatch buildings. 5 Correct? 6 A That's correct. 7 Q Did you supervise the water testing at 8 the Shipwatch buildings? 9 A I was aware of all the testing. I didn't 10 supervise it. 11 Q Who did supervise the testing? 12 A I had one of my engineers perform the 13 testing. 14 Q Who performed the testing at Shipwatch on 15 your behalf? 16 A I don't recall. 17 Q Who compiled the reports as to whether or 18 not a test resulted in a failure? 19 A Who provided the reports? 20 Q Yes, sir. Who compiled the reports? 21 A The engineer that did the testing. 22 Q What was Mr. Isaacs' role in that 23 process? 24 A He may have been one of the testers. I 25 just don't recall. All of that information should	Page 567 1 and/or approved by the building official. 2 Q Under that scenario when you're going to 3 take the windows and doors out of their openings, 4 were you then going to have to go in and beef up the 5 surrounds of those openings? 6 A We were going to have to beef up the 7 surrounds as well as waterproof the surrounds that 8 were not done properly. 9 Q Did I understand you to tell me that you 10 went to the building official at Isle of Palms and 11 attempted to grandfather in those EFCO products so 12 that you could use them? 13 A To grandfather them in and allow them not 14 to be impact rated, I tried that, yes. 15 Q And what was the response from the 16 building department? 17 A That that was not acceptable. If it 18 didn't meet code from an impact-rated standpoint, 19 they had to come out and be replaced with 20 code-compliant windows and doors. 21 Q Did they explain to you why that was not 22 acceptable? 23 A Because these windows and doors do not 24 meet code from an impact performance and they were 25 not going to allow them in the building.

28 (Pages 564 to 567)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 568 1 Q Is that the only explanation they gave to 2 you? 3 A Yes. 4 Q Did they indicate whether or not that 5 opinion that they gave to you held true for the 6 windows and doors on floors four and five of the 7 buildings? 8 A That held true for every window and door 9 on the project, yes. 10 Q Did you attempt to have them grandfather 11 in at least the doors on floors four and five even 12 if they wouldn't accept the doors and windows on 13 floors one through three? 14 A Yes. 15 Q Did they not agree to do that? 16 A They did not. 17 Q Did they give you a different explanation 18 as to why they would not accept that? 19 A The same reason. 20 Q So their interpretation of today's code 21 is that the doors on floors four and five had to be 22 impact rated as well? 23 A From small missile impact, yes. 24 Q Do you share that belief? 25 A I'm sorry?	Page 570 1 A Did I have a conversation with him as to 2 how I knew that they were not impact rated? 3 Q No, sir. Did you have a conversation 4 with him as to how it came to be that that product 5 was installed in the buildings? 6 A My explanation to him was that we had 7 windows put in during the '02 to 2010 time frame 8 that were not impact rated. 9 Q Did he indicate why that was or how that 10 was permitted if it was permitted? 11 A He didn't know how that got permitted. 12 There was no permit. 13 Q Why do you say there was no permit? 14 A Because he had no record of a permit of 15 that. 16 Q Did you deal with anyone else at the Isle 17 of Palms building department as to whether or not 18 they would permit the EFCO products to be 19 reinstalled? 20 A I did have some conversations with -- I 21 think the guy's name is Doug Carr, Kerr, something 22 like that. It seems like initially I spoke with 23 both of those two gentlemen. 24 Q What was Mr. Carr's or Mr. Kerr's 25 position at the Isle of Palms building department?
Page 569 1 Q Do you share that opinion? 2 A I'd have to go back and look at the 3 particular language of 2012 IBC, but I'm pretty sure 4 that's the case. 5 Q Did Sutton-Kennerly & Associates give any 6 consideration to using hurricane shutters or some 7 other method to protect the glass from impact? 8 A That was also mentioned to the building 9 official and denied. 10 Q Was there an explanation as to why that 11 was not going to be permitted? 12 A There was, but I don't recall exactly 13 what it was. 14 Q Were any of those discussions in writing 15 with the building official, or were they all oral? 16 A I don't remember. It seems like I had a 17 confirmation e-mail after my meeting with those 18 guys, but I just can't remember. 19 Q Who were you dealing with at the Isle of 20 Palms building department? 21 A William Seabrook. 22 Q Did you have any discussions with 23 Mr. Seabrook as to how it came to be that there was 24 non-impact-rated products installed in the buildings 25 to begin with?	Page 571 1 A I don't have their titles in front of me. 2 Q Did you gain an appreciation as to who 3 was his superior or if they had the equivalent role? 4 A I believe Mr. Kerr or Carr, I think, is 5 the head of that division, and I think Seabrook 6 reports to him. 7 Q Is it one or both of them who told you 8 you could not reuse the product? 9 A I don't remember. 10 Q Was consideration given to reglazing any 11 of the EFCO products with impact-rated glass? 12 A There was thought given to that, yes. 13 Q Tell me what went into that thought. Was 14 that something you were involved in or someone else 15 at Sutton-Kennerly & Associates was involved in? 16 A It seems like we pursued every avenue 17 that we felt that we could to try to keep these 18 windows that were performing from a water-resistant 19 standpoint. They just weren't impact rated. 20 It seems like we looked and talked about 21 switching the glass out and how the glass set or fit 22 into the frame and that the glazing pocket was such 23 that it may or may not facilitate that. 24 But I know there was some research and 25 looking to see what, if anything, could be done to

29 (Pages 568 to 571)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 572 1 facilitate that. 2 Q Was anyone at EFCO consulted as to 3 whether or not impact glass can be installed in any 4 of the EFCO products at Shipwatch? 5 A I believe there may have been. I believe 6 we contacted somebody with EFCO to discuss that. 7 Q Who was that, please? 8 A I'd have to go back to the file. I don't 9 remember. 10 Q Do you believe that was done via e-mail 11 or phone call? 12 A I don't remember. 13 Q Perhaps we should back up. Was that a 14 phone call or a communication that you recall being 15 involved in, or someone had that communication on 16 your behalf? 17 A I believe it was one of my staff 18 engineers pursuing that for me. 19 Q Who was that staff engineer? 20 A I don't remember. 21 Q Was there any discussion with the 22 building official related to the inability to reuse 23 EFCO products because of how much construction work 24 was going to be performed because of the repairs? 25 A I don't believe that weighed in on his	Page 574 1 EFCO sliding glass doors on projects very 2 successfully, yes. 3 Q And over the last, say, ten years, can 4 you name the projects you can remember where you've 5 spec'd that product? 6 A I put it on the Windemere condominiums, 7 North Myrtle Beach. I believe I put it on the 8 Harbor Inn condos down in Wrightsville Beach. I'm 9 sure there may be others, but those two come to 10 mind. 11 Q Was Windemere new construction or repair 12 work? 13 A It was a remediation project. 14 Q What was scope of that remediation 15 project? 16 A Very similar to this particular scope: 17 Replacement of the cladding, replacement of the 18 windows and doors, coatings. 19 Q All cladding and all windows and doors? 20 A Yes. 21 Q What about the Harbor Inn condos? 22 A That was -- I think they had kind of a 23 combination sliding glass door with fixed panes on 24 the sides that got replaced, coatings, concrete 25 balcony waffle slab repairs, maybe some handrails.
Page 573 1 decision. 2 Q Have you been involved in construction or 3 remediation projects where you were able to reuse 4 windows or doors? 5 A I'm sure I have in the 25 years of my 6 career. I just don't remember exactly when or 7 where. 8 Q In those cases where you have, do you 9 recall whether or not there was a percentage of 10 construction work that was important to the building 11 official as to whether or not you could remove or 12 replace windows and doors? 13 A I don't recall. It's typically dictated 14 by the entity with the county that you're actually 15 working with. I just don't remember the specifics 16 of these different projects. 17 Q Are you familiar with the EFCO 3015 18 Series sliding glass door? 19 A Somewhat, yes. 20 Q Have you specified it on projects? 21 A I'm sorry. Say that again. 22 Q Have you specified it on projects that 23 you have designed? 24 A I believe that is the model number. I 25 don't have it in front of me. But I have spec'd	Page 575 1 Q How long ago was that project done? 2 A Harbor Inn, I think, was in '06. 3 Q When you removed the sliding glass doors 4 in the Harbor Inn condos, was the glass removed from 5 every opening, or was some of the glass left in 6 place? 7 A No. The entire unit got removed and new 8 units put in. 9 Q And that was in every condo unit? 10 A At Harbor Inn, I think there were only 12 11 or 16 units, but yes. 12 Q Have you ever provided a design that 13 involved the installation of new EFCO sliding glass 14 doors where not all sliding glass doors or all 15 windows within a regime were being removed and 16 replaced? 17 A Let me think. Yeah, I think that's 18 happened some. I just don't recall what or where. 19 Q How would I figure out what or where 20 those projects were? 21 A I would have to go back through a list of 22 our projects and figure out -- refresh my memory on 23 projects as I look through the database that would 24 involve windows and doors, and then either remember 25 directly from the name of the project or actually

30 (Pages 572 to 575)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 try to find the electronic file and go through the
2 scope of work that was performed.

3 Q Do you keep a list of such projects that
4 you've worked on?

5 A We've got a database of all of our
6 projects since about 1998. I don't know that we
7 have the files for those, but we have a database.
8 Some of those I'll be able to remember once I read
9 through the database.

10 Q I'm just curious if in advance I can get
11 a printed copy of whatever those projects are so
12 that I know how extensive they are, if there's 40 or
13 50 or 100 or whatever the number. I'm not asking
14 you to give me a copy today. I'm just wondering if
15 that's a possibility of something that can be done.

16 A No, not today. Are you looking for
17 projects for SKA or projects that Jeff Miller was
18 involved with?

19 Q Projects that you were involved with.
20 So, for example, on my computer software at our law
21 firm I can search by matters I'm assigned to, and I
22 can look back at, say, a ten-year period and see all
23 of the cases. I'm just curious if you have
24 something similar where you can print a list of the
25 projects that you were involved in over the last ten

1 years that would allow you to more easily look and
2 determine if one of those met the criteria that
3 we've been talking about.

4 A Yeah, our database. I should be able to
5 go through the search engine somehow to narrow down
6 remediation projects if they were coded correctly
7 into the system. And then depending upon what they
8 are, that may tell me -- refresh my memory as to
9 what we did on each of those projects.

10 Q I would like to do that. I can make a
11 formal request if necessary. I can follow up with a
12 letter or e-mail, whatever is most convenient.

13 Does Mike Parker still work at
14 Sutton-Kennerly & Associates?

15 A He does.

16 Q Have you had any contact with Mike about
17 the Shipwatch project?

18 A I have not.

19 Q Have you had any contact with Mike about
20 conversations he had with Linda Jernigan before you
21 became involved in the Shipwatch project?

22 A I don't know what Mike and Linda may have
23 conversed on.

24 MR. KELLY: Mr. Miller,
25 understanding that you may have opinions you reach

1 in the future regarding this case, I'm going to
2 reserve my right to ask you questions about those
3 opinions. As of now, I believe I've asked all the
4 questions I can ask of you today.

5 EXAMINATION

6 BY MS. FERGUSON:

7 Q Mr. Miller, my name is Katherine
8 Ferguson, and I represent Glasstec. I have been
9 here all day listening to your answers, so I'm fully
10 aware that you haven't had time to fully review your
11 files before today's deposition. So some of my
12 questions to you might seem redundant. I can
13 promise you, I'm not trying to be difficult. I just
14 want to ask you some questions as they pertain to my
15 client. Is that okay?

16 A Sure.

17 Q Are you familiar with Glasstec?

18 A I am.

19 Q Do you know the scope of work that
20 Glasstec performed at the Shipwatch project?

21 A I do not.

22 Q Is that because sitting here today you
23 haven't had time to review your file, or you just
24 have no information with regard to Glasstec?

25 A Well, I believe they put in the majority

1 of the glass on the project from '02 to 2010. But I
2 also believe there may have been some other glass
3 folks that put other pieces in. But I believe they
4 put in the majority of the glass.

5 Q I'll represent to you that the last time
6 they performed work at Shipwatch was in 2002.

7 A Okay.

8 Q So is it fair to say that sitting here
9 today you don't really know the scope of the work
10 performed by Glasstec at the Shipwatch project?

11 A I would say that's true.

12 Q And then sitting here today, do you have
13 any opinion as to the work performed by Glasstec?

14 A Since I don't know specifically what they
15 did, obviously I have no opinion.

16 Q Do you believe that you might have a
17 future opinion as to Glasstec?

18 A I would assume if there are documents
19 available that explain what they did during 2002, I
20 can then form an opinion whether they failed to meet
21 the standard of care in their performance. But I
22 would have to review documents to be able to
23 determine that.

24 Q Have you been able to determine if any
25 damage or any alleged damage in the Shipwatch

1 mechanically anchored to the structural slab. So we
2 found significant deficiencies in the attachment of
3 the units to the framing structure.

4 Q Could you determine what the resulting
5 damage was specifically from problems with the
6 doors?

7 A Specifically with the door unit. The
8 door units, at least one, maybe more, were isolated
9 and water tested and successfully passed the water
10 test performance that we did.

11 The problem with the doors was not the
12 performance of the door units, but it was the
13 impact, the attachment, and the lack or improper
14 waterproofing around the door openings.

15 Q Right. Can you tell me what the
16 resulting damage was with the attachment and lack of
17 waterproofing of the door opening? Can you tell
18 me --

19 A Well, the lack of proper waterproofing
20 around the door openings resulted in staining and
21 corrosion of stud framing and staining/deterioration
22 of sheathing and finish components.

23 Q But there's also problems with the DEFS.
24 Can you break out the damages, or can you
25 determine -- Can you say this resulting damage is

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 document that summarizes 20 or so different
2 requests.

3 And then change order No. 3 is something
4 like 43 through 65, and it totals \$57,000 after
5 sitting down with the contractor and working that
6 out. That needs to be an official document. But
7 the dollars and the scope and all the items have
8 been gone through and vetted.

9 Change order No. 4, I'm waiting to get a
10 handful of items that the contractor says is his
11 last request.

12 Q So that change order No. 1 has always
13 been the same?

14 A Yes.

15 MS. SMITH: That's it. Thank you.

16 E X A M I N A T I O N

17 BY MR. KELLY:

18 Q I have two questions and then I'll be
19 done. Before we wrapped up, I wanted to ask a
20 question.

21 A Yes, sir. Go ahead.

22 Q Mr. Miller, just for clarity purposes, I
23 want to make sure I understand a couple of things.

24 The fact that buildings A and B have
25 non-impact windows and doors installed in the

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 buildings, is the fact that those windows and doors
2 are non-impact causing any damage to the building?

3 A In and of itself, I would say no.

4 Q Same question. Prior to the time the
5 windows and doors were removed from buildings C and
6 D, it's my understanding you believe that the
7 windows and doors had non-impact glass. Correct?

8 A That's correct.

9 Q Did the presence of non-impact glass in
10 those windows and doors lead to any damage to
11 buildings C and D?

12 A No damage, fortunately, because we had no
13 hurricane blow through there. But no.

14 Q I think you indirectly answered this, so
15 I want to ask you directly. Do you agree with me
16 that the EFCO window and door products supplied to
17 the Shipwatch project are not defective in design or
18 fabrication?

19 A I think I would make the statement that
20 there was no evidence that those units exhibited
21 leakage during our water testing. I did not see
22 shop drawings of those doors and windows from a
23 design or install standpoint.

24 Obviously, from an install standpoint, if
25 there are no fasteners in the jambs and you've got

1 fasteners in the sill to a member that's not
2 connected to the structural slab mechanically, but
3 the units themselves exhibited no evidence of water
4 intrusion.

5 Q Do the units themselves exhibit any
6 evidence of a defect?

7 A None that I recall.

8 MR. KELLY: Those are all the
9 questions I have. Thank you, sir.

10 MR. ROOT: This is David Root,
11 counsel for BASF, noting on the record that
12 Mr. Miller's deposition was noticed for today,
13 Wednesday, the 27th, and Friday, the 29th, and that
14 defense counsel have agreed to withdraw the notice
15 for the 29th on the basis that Mr. Miller's
16 testimony today has indicated he's not been able to
17 get to a point to render final opinions on a number
18 of issues and won't be able to get to that point
19 tomorrow. So that notice is withdrawn and Friday is
20 open.

21 (End of deposition.)

22

23

24

25

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

EXHIBIT C

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,

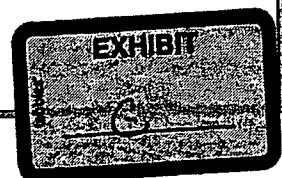
-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

THE CONTINUATION OF THE DEPOSITION OF GREG ISAACS was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Thursday, the 28th day of August 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, Charlotte, North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net



Page 538 1 when you did your more full report and then started 2 work, do you know of any work that was done between 3 that era or in that era? 4 A I'm unaware of that. 5 Q Have you reviewed your reports, the 6 primary reports? By that, I mean the January and 7 April reports. What have you-all been referring to 8 today? The April report? 9 A Yes, April 2012. 10 Q Which I think encompasses most of the 11 findings from the January report as well. 12 In any event, Exhibit 59, did you review 13 that report prior to your deposition today, in 14 preparation for the deposition? 15 A I did not. 16 Q You are familiar with the findings in 17 that report. Correct? 18 A Yes. 19 Q Do you now deviate or have an opinion 20 contrary to any of those findings? 21 A I do not. 22 Q Pro-Tec has been about two or so months 23 late, for lack of a better term, in getting the job 24 done. Correct? 25 A Yes.	Page 540 1 expense allocation? 2 A We've had change orders, and we've had to 3 address all of those. 4 Q As far as what would be responsive to 5 that question, meaning something that was an 6 atypical problem that was not perhaps anticipated 7 when the project began, all of those type issues 8 would be incorporated or encompassed within the 9 change orders. Is that correct? 10 A Yeah, that's fine. 11 Q Is that fair enough? 12 A Okay. 13 Q Well, I'm asking you. Is that fair? 14 A Yes, that's fine. 15 Q You keep saying "that's fine." I'm 16 trying to make the most succinct way to get about 17 this, besides from going through all the change 18 orders. If there's something else outside that 19 realm, I wanted to speak about it. But if the 20 change orders encompass the material changes to the 21 work versus what was anticipated on the front end, 22 then we are good. And you're saying yes? 23 A Yes. 24 Q Have you come to form any opinions that 25 there was anything wrong with the DEFS as a product?
Page 539 1 Q They were supposed to be done May 31st. 2 Correct? 3 A Correct. 4 Q And it's my understanding that they got 5 to substantial completion, in quotes, around August 6 1st? 7 A Correct. 8 Q Do you know what the cause is for that 9 delay? 10 A Allocating their resources, project 11 management, getting people scheduled to do the right 12 things at the right time. Just planning and 13 scheduling. 14 Q On Pro-Tec's behalf? 15 A Correct. 16 Q Have there been any particular problems 17 that you-all have experienced during the course of 18 the construction or the remediation? 19 A Can you be more specific? 20 Q No, because I'm looking for anything that 21 you've experienced. I don't mean just something 22 that's a one-off or atypical, but something that was 23 just simply not anticipated and has caused a great 24 deal of-- I know there have been change orders, but 25 a great deal of change in either time allocation or	Page 541 1 Meaning not related to installation, but as to it as 2 a product, in its manufacture or design, anything of 3 that nature? 4 A No. That's more Jeff Miller's realm. 5 Q Same question as to the deck coating. Do 6 you have any opinion that there are any deficiencies 7 or problems in a general sense with the deck coating 8 as a product, as it's designed or manufactured? 9 A In terms of the deck coating material 10 itself? 11 Q Yes, sir. 12 A No. 13 Q Have you done any product literature 14 review since we last spoke? 15 A No. Just I've been working on any new 16 products that we use, but nothing previous. 17 Q Had any discussions with anyone from BASF 18 since we last met? 19 A No. 20 MR. ROOT: Mr. Isaacs, those are all 21 the questions I have for you. I appreciate your 22 time. 23 EXAMINATION 24 BY MR. KELLY: 25 Q Mr. Isaacs, I'm on the phone. I've got

26 (Pages 538 to 541)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 542 1 my kids in the car. This is probably going to be 2 the worst deposition experience ever, but I'm going 3 to give it a shot. I represent EFCO and W.C. 4 Johnston Architectural Sales. 5 I asked you some questions the last time 6 we had your deposition scheduled. And I heard some 7 things today that made me want to clarify some of 8 the testimony today and testimony previously. That 9 will be the basis for my questioning today, and then 10 we'll see how far we have to go. 11 At some point in coming up with repair 12 plans for buildings C and D at Shipwatch, did 13 Sutton-Kennerly & Associates consider reusing the 14 EFCO products that were installed at those 15 buildings? 16 A We did. 17 Q And if there were performance problems 18 with the EFCO product installed at buildings C and 19 D, would Sutton-Kennerly & Associates have 20 considered reusing those products? 21 A Say that again. 22 Q If there were performance problems with 23 the EFCO products that had been installed at 24 buildings C and D, would Sutton-Kennerly & 25 Associates have considered reusing those products?	Page 544 1 photographs 6 and 7, but it was a small amount that 2 is contained and, according to the AAMA guidelines, 3 is not considered a leak. 4 Q I think you've referred to that at some 5 point as spitting? 6 A Correct. 7 Q And you ended up passing that particular 8 product that had been tested? 9 A That's correct. 10 Q Did any of the product you tested with 11 water fail at Shipwatch? 12 A Can you repeat that question again as I 13 look through these notes? 14 Q Yes, sir. I want to be very careful and 15 precise with our language. So I want to make sure 16 that I understand and everyone else understands that 17 when you were testing window and door products at 18 Shipwatch whether you were testing the window and 19 door surrounds as far as how the product was 20 installed or whether you were testing the product 21 itself. Do you follow me? 22 A Yeah. We did a variety. Sometimes we 23 would isolate the window or door itself and only 24 test that manufactured product. Other times we 25 would do the reverse and test only the surrounding
Page 543 1 A No. 2 Q Did you administer the water testing that 3 took place at Shipwatch? 4 A Yes. I participated in it with Eric 5 Couch. 6 Q Did you compile the results, or was that 7 Eric? 8 A It was both of us. 9 Q And it's my understanding from your prior 10 testimony that you tested the EFCO product in 11 isolation from the installation of the EFCO 12 products. Is that correct? 13 A Yes, I believe so. 14 Q In testing the EFCO products in isolation 15 from the installation methods, did you determine 16 whether or not the EFCO product passed or failed the 17 water testing? 18 A The EFCO product passed on -- Let's see. 19 Q Did you observe water penetrating through 20 any of the EFCO product during the water test? 21 A Yes. I'm looking at test area 14. That 22 is where we isolated just a new EFCO sliding door, 23 covered up the surrounding facade. And we did not 24 have a technical failure of the EFCO product. 25 We did have some water shown in	Page 545 1 cladding. And then other times we would test both 2 at the same time. 3 Q When you're considering testing a 4 product, are you considering the way the product is 5 installed or the way in which it has been 6 manufactured? 7 A We are looking at the manufactured 8 component, yes. 9 Q So when you tested the product to 10 determine whether there were any failures of the 11 manufacturing of the product, did you conclude that 12 any of the tests were failures? 13 A I'm flipping through our report here. 14 No. 15 Q Isn't it in fact only the installation 16 methods that failed when you tested the product? 17 A That's correct. 18 Q So at various times in your deposition 19 today when you have indicated that the window or 20 door itself leaked, what do you mean by that? 21 A Do you have a specific location that we 22 were talking about at the time, or are you just kind 23 of saying in general? 24 Q I don't have anything written down. And 25 I'll tell you my recollection is Mr. Elliott asked

27 (Pages 542 to 545)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 546

1 you some leading questions that ended with the word
 2 "correct," and you agreed with him, and asked
 3 whether or not the door or window leaked. So what
 4 I'm trying to understand is, what did you mean in
 5 agreeing to those questions asked whether or not the
 6 door or window itself leaked?
 7 MR. ELLIOTT: Object to the form.
 8 A Okay. So we had some -- You know, that
 9 includes the installation of the surrounding
 10 cladding and the installation of the manufactured
 11 unit.
 12 BY MR. KELLY:
 13 Q Did you in any way intend to say that the
 14 product itself is permitting water to enter the
 15 building?
 16 A We had water come through one of those
 17 bay windows, but I believe that was at a drilled
 18 hole on the inside, if my memory is correct.
 19 Q Are those bay windows EFCO products?
 20 A I don't know.
 21 Q I didn't mean to cut you off. If you
 22 aren't finished with your testimony as to that
 23 drilling in the bay window, please continue.
 24 A Just that the leaks are associated with
 25 the installation around the window or door.

Page 547

1 Q So if someone were to use your testimony,
 2 your deposition transcript at a later date to
 3 suggest that the product supplied by EFCO for the
 4 Shipwatch buildings are leaking, the products
 5 themselves as opposed to installation, would that be
 6 an incorrect suggestion?
 7 MR. FLYNN: Object to the form.
 8 A The EFCO sliding door we tested did not
 9 leak. The manufactured unit did not leak in that
 10 test area 14.
 11 BY MR. KELLY:
 12 Q Did any EFCO product that you tested
 13 leak?
 14 A Again, I'm not aware of -- didn't go back
 15 and dig back through manufacturers of who did what.
 16 But the newer door did not leak.
 17 Q Would it make sense that Sutton-Kennerly
 18 was going to reuse EFCO products if it found that
 19 the EFCO products themselves leaked?
 20 A Right. If we found a unit that was
 21 leaking, we would not want to reuse that. Correct.
 22 Q But you had envisioned reusing the EFCO
 23 product that had been installed in buildings C and D
 24 as part of the repairs at Shipwatch. Right?
 25 A That's correct.

Page 548

1 Q So is it not fair for me to assume that
 2 you do not believe that the EFCO products themselves
 3 were permitting water to enter the building
 4 envelope?
 5 A That's correct.
 6 MR. KELLY: I believe those are all
 7 the questions I have for you. I appreciate your
 8 patience with me. Sorry if it's too hectic here.
 9 EXAMINATION
 10 BY MR. ELLIOTT:
 11 Q Mr. Isaacs, the sliding glass doors and
 12 the storefront windows, I asked you if -- We talked
 13 about your water test and the DEFS, whether or not
 14 it leaked. And I asked another question, did the
 15 doors leak. And you said yes. New sliding glass
 16 doors leak and new storefront windows leaked. And
 17 then I asked you further why are the new sliding
 18 glass doors and windows being replaced, and you
 19 agreed that it was because they leaked and because
 20 of the impact rating.
 21 Now, the sliding glass doors, and we
 22 covered the oceanfront, tell me what is it you were
 23 talking about that leaked when you said the doors
 24 leaked.
 25 A I guess I was using "doors" as too broad

Page 549

1 of a term and not precise enough.
 2 Q Let me ask you this. You tested doors
 3 and you tested the cladding. You separated the two.
 4 Right?
 5 A Correct.
 6 Q And water intrusion occurred when you
 7 tested the doors. What part of the door leaked?
 8 A The components at the perimeter of the
 9 door.
 10 Q What components?
 11 A For example, test area 14, photograph 4,
 12 the water simply went underneath the sliding door
 13 unit.
 14 Q Let me get to that real quick, because I
 15 remember we talked about it. It leaked under the
 16 door where the door meets the built-up --
 17 A That's correct, curb.
 18 Q So something about how the door was
 19 installed in a curb allowed the water intrusion to
 20 occur?
 21 A Correct.
 22 Q What about the installation, if you can
 23 tell me in that detail, caused the leak?
 24 A Photographs 4 and 5, you can see a gap
 25 between the door and curb, and it goes through to

28 (Pages 546 to 549)

Janice Ohlendorf Darby, RPR
 (843) 814-7666 jodarby@comcast.net

Page 299 1 Carolina Concrete and its subs during the work with 2 regards to when they discovered a corroded stud what 3 to do? 4 A I'm not aware of that. 5 Q So you're not aware of the instructions 6 that the Shipwatch folks gave to Carolina Concrete 7 about that? 8 A No, I'm not. 9 Q With regards to the chimney framing 10 issue, what is the problem with the chimneys that 11 necessitated a complete rebuild? 12 A Our structural engineer, Tim Cook, 13 determined that they would not adequately meet the 14 wind load requirements. 15 Q And why not? 16 A Just the framing components and 17 connections were inadequate. 18 Q Did you-all test the original 19 construction of the chimneys, or are these 20 remediated chimneys? 21 A These are the chimneys as we found them 22 in this phase of work. 23 Q Do you know whether they were original to 24 the building or whether or not they were at some 25 point added later?	Page 301 1 A I do not know. 2 Q It would be safe to assume that she 3 didn't climb up and inspect that area. Correct? 4 A That's a reasonable assumption. 5 MR. COBB: Since we finally agree on 6 something, I'll quit asking you questions. Thank 7 you for your time. 8 (Recess taken.) 9 EXAMINATION 10 BY MR. KELLY: 11 Q Mr. Isaacs, my name is Britt Kelly. I'm 12 down in Charleston. I'm sorry I couldn't be there 13 with you today, but I'll try to do my best over the 14 phone. 15 If you would, please allow me to finish 16 my question before you begin to respond and 17 hopefully we'll be okay. 18 A Okay. 19 Q My first question for you, have you ever 20 worked for a window manufacturer or distributor? 21 A I have not. 22 Q Have you ever worked for any product 23 supplier? 24 A I have not. 25 Q Do you believe you're an expert
Page 300 1 A I do not. 2 Q Did it appear that they were added later? 3 A It's hard to tell. I don't know. 4 Q Did anybody do any type of investigation 5 about the chimney caps, whether or not they were 6 leaking or whether or not they needed to be replaced 7 as well? 8 A Chimney caps? 9 Q Or the spark arrestor or whatever the 10 apparatus is. 11 A Oh, those are being replaced. They were 12 corroded and had broken components -- broken metal 13 pieces on them. The caps themselves, I'm not sure 14 if we did water testing on those. 15 Q Are you aware of any warnings given by 16 Bob Wiggins to Shipwatch about the chimneys, the cap 17 and the spark arrestors during the history of 18 Carolina Concrete's work at the project? 19 A It's my understanding that Linda Jernigan 20 prior to our work, our design work beginning, was 21 aware of the problems associated with the spark 22 arrestor pieces. 23 Q And what was she aware of? 24 A That they needed to be replaced. 25 Q And who told her about that?	Page 302 1 concerning the duties and responsibilities of a 2 product manufacturer or a distributor? 3 A I am not. 4 Q At various points during your examination 5 by Mr. Cobb you referenced -- I think your term was 6 "impact-glass concerns." Do you remember that? 7 A Yes, sir. 8 Q Can you describe that for me, please? 9 What exactly are you talking about there? 10 A When we were looking into information on 11 the sliding doors and windows, our research led us 12 to believe that the sliders are not impact rated. I 13 don't have the notes in front of me, but I think 14 that came from discussions with EFCO technical 15 services and finding out what actual units were on 16 the building. 17 Q Did you have those discussions with the 18 EFCO technical services people? 19 A I can't recall. That sounds correct. We 20 could look -- I'm not sure if we have notes on that. 21 Q Do you typically take notes like that? 22 A Yeah, we should have something related to 23 that. 24 Q Do you have your entire file in front of 25 you?

14 (Pages 299 to 302)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 303

1 A We do.

2 Q Not right now, but maybe at some point we

3 can pull those out. But my question, I guess, what

4 I'm trying to get at is, do you know if the phone

5 call was with the EFCO people at one of their

6 locations or W.C. Johnston folks?

7 A I can't recall specifically.

8 Q How long do you think it would take you

9 to put your hands on that note?

10 A We've got a big pile here. I'm just not

11 sure. I could take some time and start digging.

12 Q Why don't we table that for a second and

13 we'll come back to that before we wrap up.

14 Was there any other research that you did

15 to determine whether or not any of the EFCO products

16 was impact rated?

17 A We did not. I don't think so.

18 Q Your concern about the impact rated or

19 impact ratings of the glass of the EFCO product, is

20 that limited just to the sliding glass doors, or

21 does it relate to other products?

22 A I believe it relates to the other

23 products.

24 Q What other products at Shipwatch do you

25 believe EFCO manufactured and distributed?

Page 304

1 A I'm not sure. Off the top of my head,

2 I'm not sure. I guess I was under the assumption

3 that most of the new materials that we discussed in

4 the previous questioning were generally EFCO

5 products -- sliding windows and fixed windows and

6 bay windows. It's my understanding that those were

7 also EFCO. But I don't have notes on that in front

8 of me.

9 Q How did you gain the understanding that

10 the bay windows were EFCO products?

11 A Again, I'm not sure. I would have to

12 look in my notes to see if they are or not.

13 Q What type of notes did you make to show

14 the manufacturer of a product?

15 A I know on several of the products there

16 are some notes from the manufacturers, either

17 stamped on the aluminum frame or perhaps on the

18 glass.

19 We've also had some -- I guess some

20 verbal communication with the owner indicating that

21 in general most of the products were EFCO products.

22 Q Who is the owner you're referring to?

23 A Linda Jernigan.

24 Q Mr. Cobb referenced a number of original

25 door and window units on the project. I'm trying to

Page 305

1 use his language as best I can. You know when

2 you're out there -- I guess buildings C and D are

3 undergoing the repairs now. But before they did, if

4 you were in one of the units in the living room,

5 there's a sliding glass door and then some fixed

6 windows next to that sliding glass door. Does that

7 sound familiar?

8 A Yes.

9 Q The majority of those units, at least you

10 believe that the sliding glass doors and the fixed

11 windows that were installed prior to this latest

12 round of construction work were original to the

13 building?

14 A I'll pull up that sheet that I just had.

15 It looks like based on these notes -- I forget what

16 exhibit that was, but these elevation drawings of

17 making notes of old versus new, it appears that in

18 the family room most of those sliding doors are old.

19 Q What about the fixed windows that are

20 next to those sliders on floors one through three of

21 buildings C and D?

22 A Buildings C and D, those fixed windows

23 are all old according to these notes.

24 Q Did you gain an appreciation for how old

25 those fixed windows and sliding glass doors in the

Page 306

1 living rooms of floors one through three of

2 buildings C and D were?

3 A Again, what we're calling new was

4 probably within the last eight to ten years

5 approximately. And then what we're calling old,

6 based on the color and things we discussed

7 previously, definitely more than that. 20 plus

8 years would be a reasonable approximation.

9 Q Remind me how you described the

10 differences between the new product and the old

11 product.

12 A For these notes, you know, taken from the

13 ground and looking up at the building, and in

14 general when we did go to actual units on balconies

15 and end units, the new windows had a much darker

16 bronze frame with much wider aluminum frame

17 components, and the older units had a noticeably

18 faded color to a lighter brown and more narrow

19 aluminum components.

20 Q How would you describe the difference, if

21 any, in the glass between the new and the old

22 product?

23 A I'm not sure I looked too closely at the

24 glass itself. There is a slightly different color

25 in terms of thickness. I'd have to refer back to

15 (Pages 303 to 306)

Janice Ohlendorf Darby, RPR
 (843) 814-7666 jodarby@comcast.net

Page 307 1 photographs. 2 Q Based on your experience and your 3 observations in the field at Shipwatch on buildings 4 C and D on floors one through three, you believe 5 that the old doors and fixed units have impact glass 6 within them? 7 A I do not believe that they had that. 8 Q When was the decision made to replace all 9 the windows and doors at Shipwatch with impact-rated 10 glass product? 11 A I guess that would be after our 12 investigative reports. So our last one was April 13 12th. And after that April 12th report, we met with 14 the Shipwatch HOA and discussed remediation. 15 Specifically a date, I'm not sure of a specific 16 date. 17 Q Who was at that meeting? 18 A These were telephone calls and site 19 meetings between Jeff Miller and Shipwatch. 20 Q Were you part of those? 21 A I was not an integral part. I may have 22 listened into some phone calls or attended one or 23 two meetings that I don't remember specifically. 24 But Jeff was in charge of leading those discussions. 25 Q What do you remember about the first	Page 309 1 Q How were you under that impression? 2 A We were told by Shipwatch. 3 Q Do you recall if the suggestion to 4 replace all the windows and doors was raised by 5 someone at Sutton-Kennerly or raised by the owners? 6 A That was likely an SKA decision. I think 7 we considered the idea. I think we tried to find 8 out if we could improve the existing newer products, 9 and I think the conclusion was that that was not a 10 preferred method of repairs in terms of, I guess, 11 cost and time. I can't remember if it could or 12 could not have been done at all. 13 Q It sounds like to me someone reached a 14 conclusion that windows and doors that may not be 15 impact rated could not remain in the buildings at 16 Shipwatch. Is that accurate? 17 A That's correct. 18 Q Who made that determination? 19 A Sutton-Kennerly. 20 Q Did you participate in that analysis? 21 A I assisted Jeff Miller in that analysis. 22 Q How was that determination made that 23 non-impact rated product could not remain in the 24 buildings at Shipwatch? 25 A Because they are in a wind region that
Page 308 1 meeting or phone call you had where an issue was 2 brought up about removing and replacing the windows 3 and doors at Shipwatch because of impact glazing? 4 A What's the question about the impact 5 glazing? 6 Q What do you recall about the first 7 meeting or phone call that you participated in where 8 an issue was brought up about replacing the windows 9 and doors because of impact-rating concerns? 10 A I don't recall specifically. I'm sure 11 after we discovered they were not impact rated, we 12 mentioned that to them. I don't specifically 13 remember doing that or when it happened. 14 Q In 2009, you authored a report with 15 Mr. Parker about the conditions of the building. 16 Correct? 17 A That's correct. 18 Q And those same old windows and doors were 19 installed in the building at that time. Right? 20 A That's correct. 21 Q And an observation could have been made 22 to determine that those windows and doors did not 23 have impact glazing. Correct? 24 A Yeah. We were under the impression that 25 the owner had a schedule in place to replace those.	Page 310 1 requires impact-rated components. 2 Q For new product? 3 A Yes. That's my understanding. 4 Q And what standard or authority are you 5 relying upon for that proposition? 6 A I believe that's in the IBC, 7 International Building Code. 8 Q What version of the IBC? 9 A I don't have those in front of me. Like 10 we mentioned earlier, several phases of work were 11 done at different times. So there may be different 12 codes applicable at different times of work being 13 performed. 14 Q What I'm talking about is what standard 15 you believe governs the decision Sutton-Kennerly 16 made to remove and replace all the product with an 17 impact-rated product? 18 A I believe that was the building code. We 19 have a structural engineer. I do not personally do 20 structural engineering. And he is more familiar 21 with the building code, and he also assisted Jeff 22 Miller in reaching that conclusion. And he is more 23 familiar with the building code and how it applies 24 to wind-related items than myself. 25 Q What is his name?

16 (Pages 307 to 310)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 311 1 A Tim Cook, C-o-o-k. 2 Q It seems that over 50 percent of the 3 building had what was known to everyone as 4 non-impact glazing product within it for a number of 5 years and no recommendation was made to replace all 6 of that product with impact-rated glazing. So how 7 did it come about in 2012 that a decision was made, 8 okay, now we need to replace everything with 9 impact-glazed product? 10 A Again, we were under the impression in 11 2009 that a plan was in place already to update 12 those products. 13 Q So is it acceptable for non-impact rated 14 product to be in the building between 2000 and 15 2009? 16 A For it to be in the building at all? 17 Again, I'm not as familiar with the wind 18 requirements in the building code. I believe it 19 applies to the time of installation and repairs. 20 I'm just not sure. 21 Q What jurisdiction had authority over the 22 replacement work that was performed at Shipwatch in 23 the 2000s? 24 A Can you repeat that, please? 25 Q What jurisdiction relative to the	Page 313 1 Q Have you reviewed any of the project 2 documents produced by Carolina Concrete? 3 A I have not. 4 Q Same question for Charleston Glass. Have 5 you reviewed any of their project documents? 6 A I have not. 7 Q What about EFCO or W.C. Johnston 8 Architectural Sales? 9 A I have not. 10 Q Did the 1997 Standard Building Code 11 require impact glazing in window and door products? 12 A I do not know for sure. I do not believe 13 that it did. 14 Q I've reviewed your reports and it looks 15 to me like Sutton-Kennerly & Associates water tested 16 several EFCO products, some windows and doors. Do 17 you believe that to be the case? 18 A Yes. 19 Q Did any of the water testing performed by 20 Sutton-Kennerly & Associates reveal failures with 21 the EFCO products? 22 A No. We had some -- a small amount of 23 water come in on one sliding door while applying 24 pressure, but that water did not drip over the edge 25 in order to constitute a leak. So, no, there was
Page 312 1 building department had authority over the 2 replacement work at Shipwatch that occurred in the 3 2000s? 4 A Well, they would have used South 5 Carolina -- State of South Carolina adopts the 6 International Building Code, and whatever building 7 code they had adopted at that time would be their 8 governing code. And then the Isle of Palms -- the 9 City of Isle of Palms also has a building department 10 for construction work. 11 Q Do you know what the Isle of Palms' code 12 adoption history is? 13 A I do not. 14 Q Do you know if the Isle of Palms building 15 department had authority to permit work at Shipwatch 16 during the 2000s? 17 A I do not know that for sure, but that 18 seems reasonable. 19 Q The building official has the ability to 20 permit work under a certain version of the code? 21 A Yes. I would say, yes, that sounds 22 correct. 23 Q What building code was the Shipwatch 24 window and door replacement work permitted under? 25 A I'm not aware.	Page 314 1 not a failure. 2 Q Is that the one you referred to in the 3 report as spitting in the glass? 4 A That's correct. 5 Q But you deemed that to pass the test? 6 A I believe so. Let me look up that actual 7 area to remember. 8 That's correct. Test area 14, no water 9 intrusion was attributed to the manufactured door 10 unit. 11 Q Are you aware of any failures of the EFCO 12 products that have led to water intrusion into the 13 building or the building cavity? 14 A I'm not aware of that. 15 Q And I should specify or should clarify 16 that. I said building. I'm referring to all four 17 buildings at Shipwatch. Are you aware of any 18 failures of EFCO products that have led to water 19 intrusion into any of the four buildings or the 20 building cavity of the four buildings? 21 A I'm not aware of that. 22 Q Do you hold any opinions that the EFCO 23 products supplied at the project are defective in 24 design or fabrication? 25 A I do not have an opinion on that.

17 (Pages 311 to 314)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 315 1 Q Do you know if anyone at SKA has an 2 opinion as it relates to the products supplied to 3 the Shipwatch job as to whether those EFCO products 4 are defectively designed or fabricated? 5 A Jeff Miller, the project manager, would 6 have that. 7 Q What do you believe Mr. Miller's opinion 8 to be? 9 A I can't speak for him. But the water -- 10 You know, the manufactured units passed the water 11 testing. So in terms of water testing that I did, 12 they are not defective in shedding water away from 13 the building. 14 Q Has Mr. Miller told you that he holds an 15 opinion that the EFCO products supplied to the 16 Shipwatch buildings are defective in some manner? 17 A He has not told me that. 18 Q But you believe he holds that opinion, or 19 did I misunderstand you? 20 A I don't know. 21 MR. KELLY: If you don't mind, would 22 you take a moment to look for those notes we talked 23 about. If you find them, I would like to get the 24 dates on them. I want to make sure they've been 25 produced to us.	Page 317 1 A October 24, 1983. 2 Q And how long have you lived in the 3 Charlotte area? 4 A I moved here in June of 2006. 5 Q Tell me about your education. 6 A I have a bachelor's degree in civil 7 engineering from Clemson University. 8 Q When did you receive that? 9 A That was the spring of 2006. 10 Q Any formal education after that? 11 A No. 12 Q All of your registrations, licenses, 13 certifications, could you list those for me? 14 A I am a professional engineer in North 15 Carolina and South Carolina. 16 Q I am looking at Exhibit 58, and this is 17 what you've handed to me in response to my request 18 for a CV or resume. I think you gave it with the 19 caveat that this may need updating. 20 A Yeah, I haven't -- I didn't produce that. 21 That was -- I'm not sure when that was produced. 22 But I asked our administrative assistant for a 23 recent resume, and I haven't had a chance to review 24 it since we sat down. 25 Q Is this something that is incorporated
Page 316 1 (Lunch recess taken.) 2 (Exhibit Nos. 58 and 59 marked 3 for identification.) 4 EXAMINATION 5 BY MR. ROOT: 6 Q Mr. Isaacs, my name is David Root. I 7 represent BASF, which is a defendant in this lawsuit 8 brought by the Shipwatch folks. I'll be asking you 9 some questions today, as will these other attorneys. 10 Because we're not going to finish your 11 deposition in total today, I'm going to limit my 12 questions to a certain span of time reserving the 13 right to ask you questions at a later date. Because 14 there are a lot of photographs, et cetera, that I 15 want to go over and get in some more detail, but at 16 least I can cover some of the general issues today. 17 As I understood it from some of your 18 earlier testimony, this is the first time you've 19 been deposed? 20 A That's correct. 21 Q Let's do some background stuff, because I 22 don't think we covered much of that. Where were you 23 born? 24 A I was born in New Haven, Connecticut. 25 Q And when were you born?	Page 318 1 within SKA's advertising, marketing-type materials? 2 A Yes. 3 Q When you speak of seven years of 4 experience with SKA -- and we'll talk about that. 5 We'll talk about it in reverse chronology. Have you 6 had any jobs in the construction industry prior to 7 SKA? 8 A I did summer work at a surveying company. 9 Q When was that? 10 A I would have to look that up. I believe 11 that was the summer after my freshman year in 12 college. So that would be most likely the summer of 13 2003. 14 Q What was the nature of the surveying? 15 A It was a small surveying company that had 16 a contract to define the boundary of the Redstone 17 Arsenal in Huntsville, Alabama, which is a 30-plus 18 mile perimeter of federal property, and they wanted 19 to establish their property lines for security 20 reasons. 21 Q When is the next job you held in the 22 construction industry? 23 A In the construction industry, I did 24 some -- I had some summer work at the University of 25 Alabama Huntsville where I assisted graduate

18 (Pages 315 to 318)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

EXHIBIT D

1 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
2)
3 COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-3857
4 SHIPWATCH CONDOMINIUM)
5 ASSOCIATION, INC.,)
6)
7 Plaintiff,)
8)
9 vs.)
10)
11 CAROLINA CONCRETE)
12 SYSTEMS, INC., et al.,)
13)
14 Defendants.)
15)
16)

9 STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
10)
11 COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-3858
12)
13 OSCAR MENDIONDO, et al.,)
14)
15 Plaintiffs,)
16)
17 vs.)
18)
19 CAROLINA CONCRETE)
20 SYSTEMS, INC., et al.,)
21)
22 Defendants.)
23)
24)
25)

17 * * * * *
18 VOLUME I DEPOSITION
19 OF: PETER SHERRATT
20 DATE TAKEN: Thursday, November 6, 2014
21 TIME: 9:50 a.m.
22 PLACE: Turner Padgett Graham & Laney
23 40 Calhoun Street, Suite 200
24 Charleston, South Carolina
25 REPORTED BY: EVE WILBANKS
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public
25 * * * * *



CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af717384063f

1 Q. Are you aware of any damage, either to
2 the windows themselves or to any components of the
3 windows or the framing?

4 A. No. We would have to go back and look
5 at the SKA photos. I am aware of damage below the
6 bay windows at C and D.

7 Q. Are those the new bay windows or the old
8 bay windows?

9 A. "New" meaning what?

10 Q. "Old" meaning original to the building;
11 "new" meaning replaced at some point in the decade
12 of the 2000's.

13 A. They appear to be at least reflashed in
14 something -- post-original construction.

15 Q. And you've not done any type of water
16 testing?

17 A. No.

18 Q. Do you have any intentions or plans to
19 do any water testing?

20 A. No.

21 Q. What criticisms do you have with regards
22 to the design of the repairs by Sisnroy?

23 A. I don't know if there was a design of
24 the repairs. It seems to me there should have
25 been drawings showing how to install the doors,

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-a77173840631

Page 90 1 Wiggins? 2 A. No. 3 Q. Do you have any opinions about Carolina 4 Concrete Systems? 5 A. No. 6 Q. Have you had any conversations with 7 anybody who said they worked with Carolina 8 Concrete Systems? 9 A. Not that I recall. I don't believe so. 10 Q. Have you had any conversations with any 11 of the subcontractors about Shipwatch? 12 A. I've had conversations, but I don't 13 think any of it pertained to Shipwatch. 14 Q. Have you had any conversations with any 15 of the experts identified by any of the Defendants 16 about Shipwatch? 17 A. I've had conversations with the folks 18 from SKA. 19 Q. Other than that? Any of the defense 20 experts? 21 A. No. I mean, other than just some casual 22 conversation when we happened to be on-site at the 23 same time. 24 Q. Have you read any of the depositions 25 that have been taken in this case so far?	Page 92 1 mentioned, the window was made larger. I wasn't 2 in that loop as to why it was. So there's 3 definitely something different there. And I 4 believe whatever is happening with the roof, that 5 was a separate contract, meaning with Glasgow (ph) 6 and the homeowners. 7 Q. What is actually being done with the 8 roof? Is the roof being replaced? 9 A. I believe so. But that needs to be 10 confirmed. I've not been involved in that portion 11 of the work. 12 Q. With regards to the length of time for 13 the repairs, have you done any type of analysis to 14 figure out whether or not it's been staffed 15 correctly or sequenced in a way that's optimal? 16 A. No. 17 Q. What are you going to do with regards to 18 the Shipwatch litigation moving forward? 19 MR. FLYNN: Object to the form. 20 A. I'm going to probably go to the site, 21 take more pictures, meaning of A and B, while that 22 work is going on, and I'll review whatever data is 23 provided to me. And I'm sure there will be other 24 things, but I don't have a list right now. 25 MR. COBB: That's all the questions I
Page 91 1 A. No. 2 Q. With regards to the repairs that were 3 done in 2013 and the repairs that are being done 4 now, did you have any role in either coming up 5 with the scope, coming up with the repair 6 methodologies, any role in that? 7 A. No. 8 Q. Based on what you know, would you 9 concede that some of the repairs that are being 10 done to the buildings are outside of the 11 responsibility of any of these Defendants? 12 MR. FLYNN: Object to the form. 13 A. I'm not aware of the full extent of the 14 work that's in the SKA contract. I know there's 15 been some minor changes, such as the bay windows, 16 meaning the size of the glass panels. And there 17 was some work done with regard to the storefront 18 systems at the elevators, and that may be outside 19 the scope of what Carolina Concrete was asked to 20 do. But I don't know the details of those things. 21 Q. Would you concede that there are 22 betterments and upgrades being done on the 23 repairs? 24 A. Not on the exterior wall envelope 25 repairs. On some of the others, as I just	Page 93 1 have for you right now. I'll pass you down 2 the road. 3 THE WITNESS: Thank you. 4 EXAMINATION 5 BY MR. KELLY: 6 Q. Mr. Sherratt, my name is Britt Kelly. 7 I'm going to ask you a number of questions today 8 related to your investigation and your 9 observations at Shipwatch. Most of them will not 10 have been asked or answered yet, but if I ask you 11 a question you've already been asked, I apologize 12 in advance. Have you done any personal 13 investigation as to the performance of the EFCO 14 doors at Shipwatch? 15 A. I have read some historic data, and 16 there were some questions raised as to whether the 17 products from EFCO met the current building code 18 that was appropriate at the time of installation 19 and also whether the units met the DP rating. I 20 think there were actually two products. There 21 were doors and there were fixed glass. 22 Q. What is your understanding -- I didn't 23 mean to cut you off. If you're not finished, 24 please continue. 25 A. Go ahead.

24 (Pages 90 to 93)

Page 94	Page 96
Page 95	Page 97

25 (Pages 94 to 97)

Page 98 1 Johnson who are listed anywhere on Exhibit 129 or 2 Exhibit 133? 3 A. I just see the name Mr. Broadway. 4 Q. Do you know who Mr. Broadway is? 5 A. No. 6 Q. Do you know if he's an engineer that was 7 retained by either Randy Morgan of Charleston 8 Glass or Lynn Jernigan to do the analysis of those 9 EFCO products? 10 MR. FLYNN: Object to the form. 11 A. What I can read here, that Mr. Broadway 12 did some analysis based on information that a 13 Randy gave him. I don't know who the Randy is. 14 And they were talking about DP ratings or the PSF, 15 and there seemed to be a conflict of whether the 16 appropriate information was given to Broadway from 17 Randy. 18 Q. But you don't know who Randy is, right? 19 A. Not right now, no. 20 Q. And you don't know who Mr. Broadway is? 21 A. Not in detail. Apparently, he did some 22 analysis, but that's the extent of it. 23 Q. Do you have any document to show me that 24 someone from EFCO or W.C. Johnson said, Our 25 product only has a DP rating of 30?	Page 100 1 A. Well, I was called from the property 2 manager. 3 Q. Is it in litigation? 4 A. No. 5 Q. Do you remember the name of the property 6 manager? 7 A. It was Kuester Management, Phil McLeod. 8 Q. What was the issue you were asked to 9 look at by Phil McLeod? 10 A. There were leaks in and around the 11 windows. And the windows -- a sample window or 12 two were removed to see how the installation was 13 as it related to the wall cladding system that was 14 also installed by Baldwin Construction. 15 Q. What did you find? 16 A. The findings were that the leak was not 17 caused by the product. There was an installation 18 problem at the termination of the wall cladding 19 system and the roofing system. 20 Q. Do you know what type of EFCO product 21 that was that you were looking at? 22 A. I don't have the model number, no. 23 Q. Was it a window or a door? 24 A. It was a window. 25 Q. Fixed or operable?
Page 99 1 A. I don't know who at EFCO that Mr. 2 Freeman tried to contact. 3 Q. So you don't have any information to 4 share with me that someone from EFCO told any of 5 the folks involved in these e-mails that their 6 product had a DP rating of 30; is that correct? 7 A. That would be correct. 8 Q. Do you know who W.C. Johnson 9 Architectural Sales is? 10 A. No. 11 Q. Do you know who EFCO is? 12 A. I know the name is a window 13 manufacturer, yes. 14 Q. Have you ever specified EFCO products on 15 any job that you've designed? 16 A. No. I looked at an EFCO window project 17 in Myrtle Beach within the past year or so. But 18 that's my extent of it. 19 Q. What job is that? 20 A. As soon as I think of it, I'll give it 21 to you. 22 Q. Who were you engaged by? 23 A. By the homeowners. 24 Q. Who is the lawyer working for the 25 homeowners?	Page 101 1 A. Operable. 2 Q. Did you make any recommendations in 3 relationship to the use or reuse of that 4 particular window? 5 A. No. The source of the water was 6 identified. The source of the water intrusion was 7 identified, and I made recommendations of what 8 needed to be done to fix it and left that with the 9 property manager and the owners association. 10 Q. What were your recommendations, in 11 general terms? 12 A. The roof-to-wall intersection had to be 13 reflash, because there were three planes that 14 came together. There was a sloped roof, a 15 vertical wall above and below the drip line and 16 flanking the drip line. So there was work that 17 had to be involved in the roofing and its related 18 flashing and how it was counter-flashed over the 19 wall system. 20 Q. Did your recommendation call for the 21 reuse of the EFCO operable window? 22 A. They were reused. 23 Q. Do you know when those EFCO windows were 24 originally installed at that project? 25 A. Well, it was a repair. I would say

26 (Pages 98 to 101)

Page 102 1 within the last two years or so. 2 Q. So I understand it correctly, so the 3 buildings underwent a repair in which the EFCO 4 product was installed? 5 A. Correct. 6 Q. And you were called out within the last 7 year, which was about roughly a year after the 8 installation of the EFCO product, to look at the 9 product to determine what was causing the leak? 10 A. Yes. The time frame may adjust a little 11 bit but somewhere in there. 12 Q. So do you know whether or not you've 13 ever specified, other than that project, perhaps, 14 the use of an EFCO product on any project? 15 A. I don't recall. It could have been in 16 the past. I know it was not within the past three 17 or four years. 18 Q. The 72 doors we were talking about that 19 were installed in early 2000, is it your 20 understanding that those doors were installed in 21 the master bedroom opening for each unit on floors 22 1 through 3 of all four buildings? 23 A. I don't know if it was the master 24 bedroom and/or the Carolina room. 25 Q. Just so we're clear, what are you	Page 104 1 installed only at the master bedroom doors of 2 floors 1 through 3 or whether they were installed 3 at the living room area? 4 A. No. I don't know when the other doors 5 were installed. But if you go in the field, there 6 are doors to the living room that are not vintage 7 1985. 8 Q. Did you find any doors in the living 9 rooms on floors 1 through 3 of buildings A, B, C 10 or D that were EFCO product? 11 A. I didn't look for the product 12 identification. So that part I can't tell you. I 13 can tell you that they were newer doors. 14 Q. Would you agree with me that in a number 15 of the units, when those EFCO doors were replaced, 16 wherever they were on the unit, in the early 17 2000s, that the rest of the glass on the 18 oceanfront remained original or prior to the 2004 19 installation? 20 A. That part I don't know. I don't know 21 when the -- we'll call them sidelights. They're 22 not true sidelights, but the fixed glass, when 23 that went in. And there are areas where there are 24 doors -- new doors, meaning new after 1985, if we 25 just use that as original construction, give or
Page 103 1 referring to as the "Carolina room"? 2 A. Call it the living room. 3 Q. Well, if you need to take time to look 4 at any documents, that's fine. But from looking 5 at it -- at the building, would you agree with me 6 that there are 72 openings that are associated 7 with the master bedroom on floors 1 through 3 of 8 the four buildings? 9 A. It's whatever the math is. I mean, I'm 10 not disputing the number. 11 Q. Well, it's important for my next 12 question, so I'm going to need -- you've got some 13 plans sitting around here, I think. 14 MR. FLYNN: It's kind of small. 15 MR. KELLY: Off the record. 16 (The deposition went off the record.) 17 THE WITNESS: 18 A. It looks like there's six per floor. So 19 that math would get you 72. 20 Q. Six per floor, three floors per 21 building, four buildings, comes to 72, right? 22 A. Yes. 23 Q. You're telling me you don't know from 24 your review of the documentation supplied to you 25 by Mr. Flynn or Ms. Jernigan whether those 72 were	Page 105 1 take a couple of years, that are in the living 2 room areas. 3 Q. Do you agree with me that there's at 4 least one unit on each building that when the EFCO 5 doors were installed in 2003 or 2004, whenever it 6 was, still had glass from prior to 1995 installed 7 in either the door or the fixed glass on the 8 oceanfront side? 9 A. That part I don't have information to 10 give you an answer on. 11 Q. Based on your investigation, your 12 observations, you can't tell me whether any of 13 those units had glass in them that predated 1995? 14 A. 1995? 15 Q. Yes, sir. 16 A. There were some original doors. If 17 we're talking -- I use the terminology the 1985 18 doors. 19 Q. That's fine. 20 A. But we're talking about the same 21 vintage; is that correct? 22 Q. The reason I used 1995 is because I 23 don't want to discount the possibility that after 24 Hugo, perhaps one door or one window was replaced 25 with some other piece of glass. So that's why I

27 (Pages 102 to 105)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 106 1 use the 1995 versus 1985. 2 A. There are some doors that are an older 3 vintage than what was installed in the 2000 era. 4 Q. Okay. And were those doors -- did they 5 contain impact glass? 6 A. No. 7 Q. Do you see other fixed windows that were 8 installed at Shipwatch prior to the 2000s that did 9 not contain impact glass? 10 A. I did not survey that. 11 Q. But you don't recall, just from looking 12 at the product, whether or not there was impact 13 glass or not impact glass? 14 A. I know there were some windows on the 15 walkway side that were not impact. But as far as 16 the fixed glass sections, I didn't survey that. I 17 can go out in the field and look. 18 Q. What is the purpose of impact glass? 19 A. It's a requirement similar to a shutter, 20 to keep projectiles from going through it and then 21 allowing the force of the wind to the interior of 22 the building. 23 Q. Why is the force of the wind to the 24 interior of the building important? 25 A. It creates a better structure for	Page 108 1 nonimpact glazing? 2 A. The building code. 3 Q. What about the building code? 4 A. The building code, as Mr. Freeman read 5 it, that was applicable at the time, required 6 either shutters or impact glass. 7 Q. Well, Mr. Freeman was reading a code 8 that was in effect in 2010, correct? You can have 9 my copy. 10 A. Can I see the other one? 11 Q. Yes. 12 A. The date of his memo, yes, is 2010. He 13 was talking about buildings A and B of the current 14 building code. 15 Q. Unfortunately, we don't have any e-mails 16 from him or any other architects or engineers from 17 the 2003 or 2004 time period like this, right? 18 A. You may. I don't. 19 Q. If I did, I promise you I would show 20 them to you. So the building code Mr. Freeman was 21 talking about in 2010 very well could be a 22 different building code than you're saying the 23 contractors had to adhere to in 2003 or 2004, 24 correct? 25 A. I don't believe so.
Page 107 1 resistance to the hurricane winds. If you allow 2 the force of the wind in, the wind is going to be 3 looking for a place to get out, and then it's 4 going to basically explode the opposite wall. 5 Q. So in the early 2000 time frame, when 6 some of this new EFCO product was being installed, 7 the 72 doors we talked about, there would have 8 been a number of openings at Shipwatch that would 9 have contained glazing that was not 10 impact-resistant, correct? 11 A. There would have been some, yes. 12 Q. That nonimpact-resistant glazing, that 13 was either original to the building or at least 14 predated the 2000 work, could be blown out by 15 wind-blown debris, correct? 16 A. Yes, it could. 17 Q. And when that product got blown out, the 18 forces that you're talking about that would be 19 imposed on the building would be imposed because 20 that product was blown out, correct? 21 A. That's correct so far. 22 Q. So what difference does it make if the 23 product that was installed in the early 2000's, 24 the EFCO product, was impact or nonimpact if the 25 -- a number of other windows and doors contained	Page 109 1 Q. Why not? 2 A. Just from my experience. Once it 3 changed to the IBC, there were drastic changes 4 from the '97 version and the adoption of the 2000 5 code we talked about earlier this morning. There 6 have been some minor changes, but I don't believe 7 the changes applied to the missile test. 8 Q. So you think the 2000, the 2003 and the 9 2006 International Building Codes would be the 10 same as it relates to impact-resistant glass? 11 A. Or very similar. 12 Q. Do you know -- or have you seen any 13 documents to show you what Carolina Concrete or 14 the window installer ordered in terms of window 15 and door products? 16 A. There was some reference to that in the 17 two documents you just had. 18 Q. Okay. Do you want to see those again? 19 A. Yes. Thank you. In the letter of 20 Freeman to Jernigan of November 12, 2010, in the 21 first paragraph, there's reference to two 22 different EFCO systems as it pertains to the size 23 of the structure, meaning the frame of the unit. 24 And in just reading the words, according to EFCO, 25 the system that they manufactured that has been

28 (Pages 106 to 109)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 110 1 tested to meet the impact requirements is the 2 system S526 system. The size of the S526 frame 3 member is five-by-two-and-a-half. The size of the 4 frames that are being used at Shipwatch are 5 four-and-a-half-by-two in size. 6 That's the extent of where apparently 7 there's a difference in the product that was made 8 for impact glass versus nonimpact. 9 Q. Are you inferring something from that as 10 to what was actually ordered from EFCO? 11 A. The ordering part, I don't think I have 12 information on it. I don't recall seeing an order 13 sheet. 14 Q. In fairness, you have not been produced 15 documents from EFCO, correct? You have not been 16 provided documents -- 17 A. No. That's what I would like to see, 18 because I also would like to see the attachment 19 requirements. 20 Q. You have not been provided documents 21 produced by W.C. Johnson Architectural Sales in 22 this case? 23 A. I have not. 24 Q. Have you been produced documents or 25 provided documents produced by Charleston Glass	Page 112 1 buildings? 2 A. It only references 4, but those are the 3 townhouse configuration, and the guest bedroom is 4 on the -- call it the back side or the walkway 5 side of the building. 6 Q. Okay. 7 A. So that seems to substantiate GBR 8 meaning guest bedroom. 9 Q. Does that help you understand anything 10 about what was actually ordered from W.C. Johnson? 11 A. Not ordered. But we've been talking 12 about 72 of them. It seemed that there was more 13 ultimately done at the project. 14 Q. That's a good segue. Exhibit 132 is a 15 document that we marked previously in Ms. 16 Jernigan's deposition. 17 A. Okay. 18 Q. Have you seen that document before? 19 A. That, I don't know. I've seen reference 20 to this vista wall before there. 21 Q. In reviewing that document, do you gain 22 the impression that Randy Morgan and Charleston 23 Glass knew they were purchasing a nonimpact 24 product for use at the Shipwatch project? 25 A. Yes.
Page 111 1 Company? 2 A. No. 3 Q. So you haven't seen the order forms from 4 Charleston Glass to W.C. Johnson? 5 A. I have seen some documentation, but I 6 don't recall seeing the order form. 7 Q. I'm going to hand you what we've marked 8 as -- unless you need to keep looking; that's 9 fine. 10 A. I'm looking at a chart that was provided 11 to me as to a sliding glass -- sliding doors 12 replaced at Shipwatch, and it goes through 13 buildings A, B, C and D. And it looks like all of 14 the master bedroom sliders were replaced between 15 '08 and 2011. But there were living room sliders, 16 or the Carolina room, whatever we want to call it, 17 that were replaced in buildings A, B and D. And 18 they have a reference, GBR -- whether that means 19 guest bedroom -- and that part I don't know what 20 -- but that might be a reasonable guess. And it 21 shows replacement in years '08 through '11. So 22 that would be more than the 72 that we talked 23 about. 24 Q. It would have been. And those are 25 limited to floors 4 and 5, right, on the five	Page 113 1 Q. Do you have any information to share 2 with me otherwise, that the people purchasing the 3 product from EFCO or W.C. Johnson did not 4 understand they were purchasing nonimpact glazing 5 products? 6 A. No. Based on that document, they were 7 purchasing it. But they were also referencing the 8 '97 code in 2010, if I'm not mistaken. Is that 9 the date on the letter? 10 Q. I believe that's right. 11 A. Yes, sir. November 11, 2010. 12 Q. In 2010, is it your understanding of the 13 building code that you could still use a 14 nonimpact-rated product as long as you had 15 shutters? 16 A. You could have appropriate storm 17 shutters, yes. 18 Q. Are you critical of EFCO or W.C. Johnson 19 Architectural Sales for selling their customer 20 nonimpact-rated glazing products? 21 A. If they're basing it on the '97 code, 22 yes. 23 Q. If who is basing it on the 1997 code? 24 A. The author of that document we just 25 read.

29 (Pages 110 to 113)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Willbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af717384063f

Page 114 1 Q. Do you have any information to share 2 with me that W.C. Johnson Architectural Sales or 3 EFCO had any idea as to what building code 4 applied? 5 A. Clearly, the local distributor should 6 know what building code was applicable. 7 Q. Do you know where W.C. Johnson 8 Architectural Sales is located? 9 A. No. 10 Q. Why do you say, clearly a local 11 distributor should know that? 12 A. Because he knows exactly where the 13 product is going. There could be an argument from 14 a manufacturer that says, we make windows for all 15 over the U.S., just as an example, and we don't 16 know where it ends up. And there may be some 17 argument there that local codes are different in 18 other areas of the country. 19 Q. You told us today that you don't know 20 what the 2000 building code says without looking 21 at it, right? 22 A. No. I need to refer back to it. 23 Q. You don't know what the 2003 building 24 code says without looking at it? 25 A. Same thing.	Page 116 1 A. I don't think you put the caveat of 2 construction litigation. I would agree that there 3 are architects in other areas of the country that 4 may not be familiar with the requirements of the 5 International Building Code because they may 6 operate under some other code or they don't even 7 have a code in that municipality. 8 Q. A building department official can give 9 a variance for a code or applicability of certain 10 sections of the code, correct? 11 A. Yes. 12 Q. How would a distributor of product know 13 whether a building department official has given a 14 variance to a contractor or not? 15 MR. FLYNN: Object to the form. 16 A. The distributor may not know, but you 17 had asked the question as to what the requirements 18 are from the person placing the order, which, in 19 this case, it looks like it's the general 20 contractor. 21 Q. Have you ever worked for a window or 22 door distributor? 23 A. No. 24 Q. Have you ever worked for a product 25 distributor?
Page 115 1 Q. The same with 2006? 2 A. Yes. 3 Q. You're a licensed architect? 4 A. Yes. 5 Q. And there are Registered Professional 6 Engineers out there that can't tell you what the 7 code says without looking at it, right? 8 A. You said, are there? 9 Q. Yes. 10 A. Yes. I would think everybody would want 11 to go back and look at the particular section. 12 Q. In fact, there are engineers and 13 architects out there who can look at it and not 14 tell you what it actually says, in relationship to 15 impact-resistant glass or DP ratings, correct? 16 MR. FLYNN: Object to the form. 17 A. And not tell you? 18 Q. Right. 19 A. I don't understand the question. 20 Q. There are architects and engineers who 21 aren't as familiar with what the DP rating 22 requirements are and the impact-resistant glass 23 requirements as perhaps those who are commonly 24 involved in construction litigation; would you 25 agree with that.	Page 117 1 A. No. 2 Q. Have you ever owned a company that is in 3 the business of distributing products? 4 A. No. 5 Q. Are you going to be able to quote me a 6 source that says a duty exists for a distributor 7 of a product to know what building code is in 8 effect for a certain time period and a certain 9 installation method? 10 MR. FLYNN: Object to the form. 11 A. It's my opinion they should know. 12 Q. Why do you hold that opinion? 13 A. If that's not valid, how would they 14 order the correct product when there are different 15 product lines? 16 Q. Do you hold that opinion because you've 17 read that in some peer-reviewed publication? 18 A. No. 19 Q. Do you hold that opinion because someone 20 in the industry has indicated to you that's the 21 way it's done? 22 A. I don't hold that, but that circumstance 23 has taken place, yes. 24 Q. So is there some source that you believe 25 I can reference to tell me that a duty exists for

30 (Pages 114 to 117)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af717384063C

Page 118

1 a product manufacturer or distributor to know what
2 building code is in effect for a certain time
3 period for a certain application method?
4 A. I don't know if there's a written
5 document. What I can tell you, there are other
6 window distributors that do that research before
7 the order is placed in the coastal environment.
8 Q. In 2010, Linda Jernigan was the property
9 manager for Shipwatch, right?
10 A. I believe so.
11 Q. And she was told that the product she
12 was getting for installation in 2010 contained
13 nonimpact glass, right?
14 MR. FLYNN: Object to the form.
15 A. That's what the document says. If
16 that's the same one we just referenced.
17 Q. Yes, sir. Look at it if you need to.
18 It's Exhibit 133. That's something you looked at;
19 it's in your file, right, Exhibit 133?
20 A. Not with the stamp on it. But I believe
21 the document is.
22 Q. The e-mail is in your file? You
23 referenced it earlier, right?
24 A. Yes.
25 Q. That's something you considered in

Page 119

1 forming your opinions in this case, right?
2 A. I don't disagree with you of what's in
3 paragraph No. 1, with the content of the e-mail.
4 Q. It says, "The aluminum storefront
5 glazing system that has been installed at
6 oceanfront window openings of the first three
7 floors of buildings A and B does not meet the
8 current building code requirements for
9 impact-resistant systems"?
10 A. That's correct.
11 Q. And Shipwatch and Ms. Jernigan did not
12 reject these windows that were installed at
13 Shipwatch in 2010?
14 MR. FLYNN: Object to the form.
15 A. I don't know about that. I don't know
16 what discussion has happened after that letter.
17 Q. You know those windows are still in
18 place out there, right?
19 A. Right. But I don't know any other
20 discussion about it.
21 Q. Well, in 2010, Ms. Jernigan is told that
22 the product is nonimpact. Do you agree with me
23 that a customer has a right to make its own
24 decision as to whether to purchase nonimpact or
25 impact-rated products?

Page 120

1 MR. FLYNN: Object to the form.
2 A. I don't understand the question. It
3 seems there's two questions there.
4 Q. We'll try it again. Do you agree with
5 me that a customer has the right to determine
6 whether to purchase impact- or nonimpact-rated
7 glazing?
8 MR. FLYNN: Object to the form.
9 A. No. No. Because the customer could be
10 a layperson and not involved in these type things.
11 They need to rely on some professional to tell
12 them or the distributor that's providing the
13 product to the area.
14 Q. Is a contractor a sophisticated --
15 excuse me -- is a window installation contractor a
16 sophisticated business entity?
17 A. It should be.
18 Q. That would be familiar with what
19 building codes may apply to the installation of
20 glazing and window products?
21 A. They should be.
22 Q. Would you agree with me that the EFCO
23 products applied at the project are not defective?
24 A. No. Because, in my opinion, they should
25 have impact glass.

Page 121

1 Q. Is there anything wrong with the product
2 itself, if the building code that's in effect is
3 the 1997 Standard Building Code?
4 A. If we set aside the glass to answer your
5 question?
6 MR. FLYNN: Object to the form.
7 Q. No. If the 1997 Standard Building Code
8 was in effect at the time all the EFCO product was
9 installed, is there anything defective about the
10 EFCO product that was installed at the Shipwatch
11 project?
12 MR. FLYNN: Same.
13 Q. You understand --
14 A. I can't answer that until I go back and
15 confirm with the '97 code.
16 Q. I'm not asking you to agree or disagree
17 which code is in effect. I'm asking you to assume
18 that the 1997 Standard Building Code was in effect
19 at the time the EFCO products were installed at
20 Shipwatch; assuming that -- realizing you can
21 disagree with that assertion later -- assuming
22 that to be the case, is there anything defective
23 with the EFCO products that were installed at
24 Shipwatch in the 2000s?
25 A. That, again, I can't answer it until I

31 (Pages 118 to 121)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840631

Page 122 1 go back and reread the requirements in the '97. 2 Q. I follow you. So you're not sure 3 whether the 1997 Standard Building Code permitted 4 the use of nonimpact glass? 5 A. I believe the '97 did, but before I can 6 answer your question, I want to go back and read 7 the appropriate sections. 8 Q. Which sections? What in general? 9 A. As to the requirement for shutters or 10 impact glass. 11 Q. Do you have any information to share 12 with me that W.C. Johnson Architectural Sales or 13 EFCO told the contractors or the owner that they 14 can't use shutters at Shipwatch? 15 A. I have no information on that. From a 16 code standpoint, you could use an appropriate 17 shutter. 18 Q. The fact that the EFCO product was 19 nonimpact-rated doesn't make it defective if you 20 use shutters, right? 21 A. That part would be correct. 22 Q. So you could take the EFCO products that 23 were installed at Shipwatch and use shutters, and 24 your opinion would be that the EFCO products are 25 not defective?	Page 124 1 -- to come to a conclusion as to what their duty 2 was or was not? 3 A. One would hope that if they're selling a 4 widget -- we'll do this hypothetically -- that if 5 a distributor is selling a widget, that he is 6 instructed by the manufacturer how the widget 7 should be installed so that can be passed on to 8 the distributor's client. And the pros and cons 9 of the product, meaning what can it perform? So 10 there is some education. I don't think there's -- 11 that that education goes down to possibly the 12 mechanic in the field or the warehouse personnel. 13 But somewhere in that organization, that 14 information has to come from the manufacturer to 15 the person who is wholesaling it so it can be 16 passed on to the retail customer. 17 Q. Do you have any information to share as 18 to whether W.C. Johnson Architectural Sales or 19 EFCO recommended or suggested the use of the 20 products that are incorporated at Shipwatch? 21 A. I don't know who recommended the 22 product. From my information, the product, 23 though, that was shipped to the job, in my 24 opinion, did not comply and does not comply with 25 the applicable code at the time.
Page 123 1 A. Based on the information that I have on 2 the product, that part would be correct. 3 Q. So your opinion is really that the 4 application of the product was an error and not 5 the product itself? 6 MR. FLYNN: Object to the form. 7 A. The product, as installed, is defective. 8 If you talk about the application, then clearly 9 the distributor should have known where the 10 product was going. 11 Q. What is your basis for that statement? 12 A. Just using your question. 13 Q. I'm not sure I follow that. 14 THE WITNESS: Read the question back. 15 THE COURT REPORTER: "So your opinion is 16 really that the application of the product was 17 an error and not the product itself?" 18 A. And that's where I'm saying the 19 distributor should have known what the application 20 was, where it was going. 21 Q. Do you know anything about the 22 education, training or experience of the employees 23 of W.C. Johnson Architectural Sales? 24 A. I do not. 25 Q. Don't you think that's relevant upon a	Page 125 1 Q. And you agree with me that if Charleston 2 Glass and Carolina Concrete knew they were 3 purchasing nonimpact-rated product, then EFCO has 4 no responsibility to provide them anything other 5 than what was ordered? 6 MR. FLYNN: Object to the form. 7 A. I think you left out the distributor, 8 though, right? 9 Q. Yes, sir, intentionally. I understand 10 your opinion on that. I was trying to move on. 11 A. I think the information trail goes right 12 down the line, just as I was trying to explain to 13 you in the hypothetical situation. It's got to 14 come from the entity that produces the widget all 15 the way down to the retail customer, which, in 16 this case, would be whoever is installing the 17 product. 18 Q. I thought a minute ago you told me that 19 you thought the case could be made for a 20 manufacturer had no responsibility to know what 21 code was in effect at the time his product was 22 installed in the field. 23 A. No. We're now talking about the product 24 itself, what it can do. That's the way I read 25 your question.

32 (Pages 122 to 125)

Page 126 1 Q. Okay. 2 A. Meaning if you make a window product, 3 just hypothetically, and you only make nonimpact 4 product, you ought to know that in a coastal 5 environment the impact product is required. I've 6 run across that with other manufacturers that come 7 into continuing ed programs and, you know, they 8 have a great product but it's not code-compliant. 9 They ought to know that before they go to sell it 10 into a product or some of the products you see 11 marketed from Window World. They ought to know 12 that their product is not code-compliant. 13 Q. Well, specifically looking at this case, 14 EFCO made impact-rated products. Right? 15 A. That's what it appears to be, yes. 16 Q. A customer could have purchased 17 impact-rated products or nonimpact-rated products? 18 A. The customer being the distributor? 19 Q. The customer being the window installer. 20 A. Yes. 21 Q. And you agreed with me a minute ago that 22 the window installer knew it was purchasing 23 nonimpact-rated products? 24 A. Yes. 25 Q. Is it your opinion that EFCO did nothing	Page 128 1 A. That's not what this is referring to, I 2 don't believe. 3 Q. Right. 4 A. This is talking about the design 5 pressure and if there's stiffener components that 6 are required. My point being, there was some 7 discussion going on, at least at 12/29/08, about 8 what are the requirements of the EFCO product? 9 What requirements do they need to meet? 10 Q. Well, there's a question about the 11 design pressure, right? 12 A. That's a question. 13 Q. That's the only question? 14 MR. FLYNN: Object to the form. 15 Q. Is there something on there that talks 16 about impact glass or nonimpact glass? 17 A. No. 18 Q. Is there anything on there that talks 19 about what building code is in effect? 20 A. No. My point being that there was a 21 dialogue going on between the manufacturer and the 22 sales company, and this was back in '08. 23 Q. About how to assemble the product? 24 A. More how the manufacturer needed to 25 design and construct the product.
Page 127 1 wrong in supplying nonimpact-rated products if its 2 customer intentionally purchased nonimpact-rated 3 products? 4 MR. FLYNN: Object to the form. 5 A. No, I don't. If you look at the 6 document from Shannon Andrews, who is a project 7 manager at EFCO, which is a Pella company, and it 8 appears that it went to james@wcjsales.com, and 9 Pella or EFCO is saying Shipwatch, and she goes on 10 to say, "I need to know the design pressure on 11 this to determine the length of the stiffener and 12 if steel is required. We have priced it that way 13 based off of the made-up design pressure used on 14 the quote" -- or it reads "quote takeoff," I'm 15 sorry. "Now we're actually going to build 16 something. I'm going to need a real number." So 17 there was some discussion from the manufacturer, 18 at least down to James at WCJ Sales. 19 Q. As to design pressure? 20 A. Well, as to the design pressure, but, 21 more importantly, how the window was to be built. 22 Q. There's no discussion as to whether -- 23 what code is in effect because we need to know 24 whether to build those as nonimpact or impact 25 glazing, right?	Page 129 1 Q. For design pressure requirements? 2 A. That's what this says, yes. 3 Q. Are you critical in any way of whether 4 the product does or does not meet the design 5 pressure requirements required by the building 6 code? 7 A. The DP rating should have been more than 8 30. That doesn't give you numbers that I can 9 respond to. 10 Q. Do you know what the design pressure 11 rating requirements -- excuse me -- start again. 12 Do you know what the design pressure ratings are 13 for the EFCO products that were supplied in 2004? 14 A. Only from reading correspondence that -- 15 from Mr. Freeman. 16 Q. Okay. 17 A. I think the discussion there was that it 18 was, give or take, a 30, and there was some 19 inquiry to another entity that talked about that 20 it should have been at least a 45. 21 Q. I saw you and Mr. Flynn looking earlier 22 at some blue pieces of paper that contained some 23 EFCO literature. Do you have that? 24 A. These? 25 Q. No. They were blue pages. The copy

33 (Pages 126 to 129)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af717384063c

Page 130 1 itself was blue. 2 A. This pile? 3 Q. I don't know. 4 MR. FLYNN: I've got an extra copy. 5 BY MR. KELLY: 6 Q. This is what I was talking about. Have 7 you seen a document that looks like that? 8 A. I don't recall seeing this document. 9 Q. What about the one we just put in front 10 of Mr. Flynn, the blue pages I was talking about? 11 A. These came about because I had asked if 12 he had any information on the installation 13 requirements, particularly as it applied to 14 attachment at the jambs. In my visit of the past 15 two times into the field, what has been observed 16 is, if you take a 5-in-1 tool and run it down the 17 jamb between the window unit, meaning that 18 product, and the buck that's forming the rough 19 opening, it doesn't get interrupted by a fastener. 20 And that's where this all came about, because I 21 didn't have any installation instructions. You 22 and I talked about that earlier. 23 Q. Gotcha. 24 A. So that's how that came about. Now, I 25 scanned this. I didn't see an answer to my	Page 132 1 Q. I'm going to hand you this document we 2 were referring to a moment ago, which is the EFCO 3 Series 3015 Sliding Glass Door Report created by 4 Construction Consulting Laboratory International, 5 and there's a Bates stamp, Charleston Glass 87, in 6 the bottom right-hand corner. That's the page I 7 want to reference. You can look at however much 8 of it you would like. 9 A. And your question is? 10 Q. I think my question was, is there a 11 correlation between 90 PSF and a DP rating? 12 A. Yes. 13 Q. What is the correlation? 14 A. I can't give you the engineering aspect 15 of it. 16 Q. Are you qualified to testify about what 17 the design pressure rating should be on the 18 project? 19 MR. FLYNN: Object to the form. 20 A. With regard to if it's in compliance 21 with the applicable building code, yes. 22 Q. Okay. Are you qualified to give an 23 opinion as to what the DP ratings of the EFCO 24 products installed at Shipwatch are? 25 A. I don't see that listed here.
Page 131 1 question. 2 Q. Can I see that white -- 3 A. Yes, sir. 4 Q. Just for the record, this is an EFCO 5 Series 3015 Sliding Glass Door Report produced by 6 Construction Consulting Laboratory International. 7 Your testimony was you had not seen this document 8 before? 9 A. I don't believe I've seen that, sir. 10 Q. Do you know what design pressure rating 11 was required for the installation of the EFCO 12 sliding glass doors in 2010? 13 A. Somewheres in the 45 to 50 range. 14 Q. Do you know what design pressure rating 15 was required for the installation of those fixed 16 window units on the ocean side of the buildings in 17 the 2010 time period? 18 A. It should have been the same. 19 Q. What does 90 PSF mean? 20 A. I would need to look at the document. 21 Q. Was there a general correlation between 22 numbers -- a number with the PSF and DP ratings? 23 A. There is, but you have to look at the 24 negative and the positive. And you have to look 25 at the size of the unit.	Page 133 1 Q. My question was, are you qualified to 2 give that opinion? 3 MR. FLYNN: Same objection. 4 A. I can get the opinion. 5 Q. How do you get the opinion? 6 A. If I was designing it, I would go to the 7 structural engineer. 8 Q. To get the opinion of what the door or 9 window product's DP rating is? 10 A. Yes. But, more importantly, if the 11 rough opening is framed, to take the rating of the 12 door or the window. 13 Q. Well, that doesn't have anything to do 14 with the door or window product itself, does it? 15 A. Well, it does for the end product. If 16 the rough opening was not framed such that it was 17 compliant with the requirements of the door or 18 window unit and the applicable building code, then 19 you could put a door in the hole and it would 20 still not work. You have to look at all of those 21 aspects. 22 Q. Well, a window manufacturer or 23 distributor has no responsibility for framing the 24 rough opening that's going to receive a door or a 25 window, does it?

34 (Pages 130 to 133)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Willbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af717384063c

Page 134 1 MR. FLYNN: Object. 2 A. The window manufacturer? 3 Q. Right. 4 A. No. Not as far as the actual framing. 5 But the window manufacturer would normally give 6 deflection limits, meaning you could not put a 7 stiffer product in a hole where the rough opening 8 is going to flex. The window manufacturer, 9 through its attachment requirements, would also 10 tell you the performance of what the frame needs 11 to be. It wouldn't typically tell you it has to 12 be metal stud or wood stud, just as an example. 13 It would tell you the requirements that that 14 opening has to comply with in the performance of 15 the opening. 16 Q. Are windows and doors typically shipped 17 with information about their DP rating? 18 A. They should be. 19 Q. And aren't those ratings typically taken 20 from the test report like you're looking at? 21 A. From the information here, yes. 22 Q. So the information to determine what the 23 DP ratings of the EFCO doors are should be right 24 there in your hands? 25 A. No. The DP rating, typically, at least	Page 136 1 A. No. 2 Q. Sir, are you offering any opinions that 3 there are any issues with the DP ratings of the 4 EFCO doors or windows at Shipwatch? 5 A. If the information shows that it didn't 6 comply with the applicable building code, then, 7 yes, I will. 8 Q. As we sit here today, do you have any 9 information to share that the product supplied did 10 not meet the DP ratings in the building codes that 11 were in effect at the time the Shipwatch projects 12 were constructed? 13 A. No. I relay to the Gary Freeman 14 documents, and I'm trying to find the documents 15 from the manufacturer that we already talked 16 about. 17 Q. And that test report I just showed you 18 for the 3015 Series doors you don't think helped 19 you at all in determining whether or not the DP 20 ratings for the doors installed at Shipwatch are 21 appropriate? 22 A. I didn't see it spelled out on that 23 document. 24 MR. FLYNN: Did we mark that? 25 MR. KELLY: I did not mark it. I think
Page 135 1 nowadays -- and I can't tell you what EFCO did 2 back in '04, but there's a sticker on the window 3 unit. 4 Q. Where do you think the number for that 5 sticker comes from? 6 A. From the manufacturer. 7 Q. Where does the manufacturer get the 8 number? 9 A. They design the product. 10 Q. Right. Well, how do they determine the 11 number through their design of the product? 12 MR. FLYNN: Object to the form. 13 A. That's from their engineer. 14 Q. You don't know, is the answer, right? 15 A. No. The answer is -- to the question is 16 from the engineering and the design of the 17 product. 18 Q. Have you ever designed a window? 19 A. No. You asked me that. 20 Q. I think I asked you if you ever worked 21 for a distributor. Have you ever designed a door? 22 A. No. 23 Q. Have you ever fabricated a door? 24 A. No. 25 Q. Have you ever fabricated a window?	Page 137 1 I referenced the Bates label. 2 MR. FLYNN: You did. So I don't need 3 it. It's the Charleston Glass doc. 4 BY MR. KELLY: 5 Q. Can an owner pull a building permit? 6 A. In some cases, yes. 7 Q. And they do in some cases, right? 8 A. In some cases. 9 Q. Do you have any knowledge as to Ms. 10 Jernigan's familiarity with the building 11 department at Isle of Palms? 12 A. No. 13 Q. Do you have any knowledge as to Ms. 14 Jernigan's familiarity with the building permit 15 process at Isle of Palms? 16 A. No. 17 Q. Do you know whether any of the units at 18 Shipwatch have hurricane shutters? 19 A. I do not know. There's one unit that 20 has some type of a track at the sill but nothing 21 at the head. But to answer your question, I don't 22 know. 23 Q. What about before the repairs were done 24 at building C and D; do you know whether any of 25 those units had hurricane shutters on them?

35 (Pages 134 to 137)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 138 1 A. Not that I recall. 2 Q. If any of the units had hurricane 3 shutters, would that address the concern or 4 criticism you had about the use of nonimpact 5 glass? 6 A. It could. 7 Q. Why do you qualify that it could as 8 opposed to would? 9 A. Because I don't know what the design of 10 the shutter is. 11 Q. I don't know enough about shutters. So 12 can you explain to me why that's important? 13 A. Well, someone may figure that a cosmetic 14 shutter is suitable as the substitution. And in 15 most cases, that is not the case. If it is a true 16 storm shutter that resists the proper impact, 17 meaning the missile test, then, yes, that could be 18 a substitute for not having impact glass. 19 Q. What is a cosmetic shutter versus -- 20 like I'm used to these roll-out, sort of 21 steel-looking things that come around the doors? 22 A. Some little cosmetic shutter on each 23 side of the window, whether it operates or not. 24 Q. Could the owners use plywood to protect 25 their glass?	Page 140 1 A. They could use plywood early on. 2 Q. So the contractor could have told them, 3 You can use plywood in the event of a storm to 4 protect your glass? 5 A. Then the general contractor, by the 6 building code, had to provide the shutters and 7 have them all numbered and put the studs in the 8 wall such that they could be put up, and the 9 product needs to be stored on-site someplace. 10 Q. And you think it's reasonable for a 11 distributor of building materials to know the 12 terms of the contract and the field directives 13 between a contractor and an owner? 14 A. I think it's incumbent upon the 15 distributor and the retailer, who may be the 16 installer, to know that something needs to be 17 there. Either to say, You need to put up 18 hurricane shutters, or, This needs to be impact 19 glass. 20 Q. Can you tell me why you believe it's 21 incumbent upon the distributor to do that? 22 A. If the distributor knows where it's 23 going, and he should, then I think that's part of 24 the service. 25 Q. Have you ever sat on a board or any sort
Page 139 1 A. At least in the beginning, I believe, 2 yes, they could. Whether it's currently approved 3 or not, that part, I don't know. Because that 4 would be a decision from the building official. 5 Q. This is what I don't understand. If the 6 owners have the ability to protect nonimpact glass 7 with shutters or plywood, at least in the 8 beginning, why would you be critical in any way of 9 the distributor or the manufacturer for selling 10 nonimpact glass? 11 MR. FLYNN: Object to the form. 12 A. Because they sold it or distributed it 13 to a project and they should have known where it 14 is. And if they sold it and understood that 15 impact glass or a shutter was there, it seems to 16 me the obligation is, we have this product but it 17 can only be used if you have the appropriate 18 hurricane shutters. 19 Q. Or plywood? 20 A. Well, that -- it depends on the window 21 of time. You can't use plywood. 22 Q. I apologize. I was trying to limit my 23 question to the time period when plywood could be 24 used, which I understood to be in the early 2000s? 25 MR. FLYNN: Object to the form.	Page 141 1 of committee that is charged with developing 2 standards or rules for window and door 3 manufacturers or distributors? 4 A. No, I have not sat on a board. 5 Q. In designing projects, is it common for 6 you to rely upon information provided to you by 7 the product manufacturer? 8 A. Yes. 9 Q. Is that because the product manufacturer 10 is the expert on its products? 11 A. No. It's because the product 12 manufacturer -- and if we use windows as an 13 example -- may tell you that a window has a 14 certain DP rating of the window tested being a 15 single unit. And what I have found in the printed 16 literature is that once you gang the windows 17 together, there are only a couple manufacturers 18 that then provide you a new DP rating, because the 19 rating is for the assembled product. So you can't 20 take a bunch of small products, gang them together 21 and expect to get the same DP rating. 22 Q. Do you know whether any of the EFCO 23 products were ganged together at Shipwatch? 24 A. No. I'm just giving you an example, 25 because yours was more hypothetical, of the

36 (Pages 138 to 141)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af717384063C

Page 142 1 manufacturer. 2 Q. Were you aware that Sutton-Kennerly & 3 Associates attempted to reuse the EFCO products 4 that are installed at Shipwatch as part of its 5 redesign? 6 A. No. 7 Q. Is that significant to you in any way? 8 A. I don't know all the details about it. 9 I would have to know more to answer your question. 10 MR. KELLY: All right. I'm going to let 11 some of these other folks ask some questions. 12 Thanks for your time. 13 MR. FLYNN: Do you want to take a couple 14 minutes? 15 (The deposition went off the record.) 16 EXAMINATION 17 BY MR. WINTON: 18 Q. Mr. Sherratt, we've met before, but for 19 the benefit of the record, my name is Tyler 20 Winton. I work at Carlock, Copeland, and I'm here 21 on behalf of Sisroy Engineering and Bob Sisroy. 22 I know you're obviously familiar with my client, 23 and I listened to some of your testimony before 24 regarding documents that you have from Mr. Sisroy 25 relative to this matter and some of your opinions.	Page 144 1 Q. I think that was in a -- I wrote it 2 down, but it was in a June or July letter, July 3 10th, 2006. Could you pull that back up and could 4 we mark that as an exhibit? If you think it's 5 going to take too long to look for it, I will try 6 to track it down when some other folks ask you 7 questions. 8 A. Why don't you go ahead and ask and I'll 9 keep looking for it. 10 Q. Also, I thought I heard you talking 11 about the lack of design drawings in this case. 12 Are you blaming or criticizing Mr. Sisroy because 13 there's not a set of design plans for the 14 renovation work that was performed out at 15 Shipwatch? 16 A. As I read the building code, there needs 17 to be an appropriate set of plans and specs -- 18 specs could be on the plans -- for any 19 construction work. 20 Q. That's any construction work? 21 A. Well, short of doing a doghouse or 22 something like that. But to keep it in 23 perspective, a project like this. And if you look 24 at what the building code says in the first 25 chapter, it talks about specific details at
Page 143 1 You mentioned at one point that you read 2 something where Mr. Sisroy called for copper pan 3 flashing to be installed at aluminum sliding 4 doors; is that correct? 5 A. Yes. 6 Q. And you noted that that would be an 7 issue if it was installed; is that correct? 8 A. The two products need to be isolated. 9 You could still use the copper. The copper should 10 not be in contact with the concrete, nor should it 11 be in contact with the aluminum. But there are 12 methods to isolate at those joints, meaning the 13 materials. 14 Q. Have you ever seen -- what are those 15 methods, just real quickly? 16 A. Well, one, you could take the 17 waterproofing and roll it over the top or 18 underneath where the door is going to be. That 19 would isolate you from the concrete. And you 20 could use a rubberized product to isolate metal to 21 metal. 22 Q. All right. Have you ever seen the 23 application of copper pan flashing and at an 24 aluminum window door or slider? 25 A. Yes.	Page 145 1 dissimilar materials or intersections of different 2 materials. 3 Q. And what building code are you referring 4 to? 5 A. The 2000 and 2003. And then as you come 6 forward, the same terminology is in the subsequent 7 codes. 8 Q. The 2000 and 2003 IBCs? 9 A. Yes. When I say code, I'm always 10 referencing the IBC. 11 Q. I understand that now. 12 A. This is that document you asked about. 13 Q. Do you mind if we mark this as an 14 exhibit to your deposition and have a copy made? 15 A. Can you make a copy and give it back to 16 me now; I mean before we -- 17 Q. I bet we can. I don't have Mr. Cobb's 18 copying skills. 19 MR. WINTON: Let's do that. 20 (Deposition Exhibit No. 184, 7/10/06 21 letter from Sisroy Engineering to Linda Jernigan, 22 was marked for identification.) 23 BY MR. WINTON: 24 Q. Is it okay if I put this sticker on it? 25 A. Yeah. Just give me a copy back. I'd

37 (Pages 142 to 145)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af717384063c

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CIVIL ACTION NO.: 2012-CP-10-3858

) CIVIL ACTION NO.: 2012-CP-10-3858

)
)
)
)
)

)

(

)
)
)
)
)
)
)
)
)
)
)

5

2015 JAN 14 AM 11:50
JULIE A. ARISTOTLE
CLERK OF COURT
BY _____

FACTS

1

has been governed since by a Master Deed, dated April 24, 1984.¹ The Shipwatch Regime is comprised of four buildings, A, B, C, and D, which each have five floors of conditioned space. In total, there are 104 condominium units in the four Shipwatch buildings. Plaintiff has an ownership interest in condominium unit D-431, which is a two story unit occupying part of the 4th and 5th floors in building D. Originally, the buildings were constructed with a synthetic stucco exterior cladding system (EIFS) and approximately 344 windows and approximately 264 sliding glass doors that did not contain impact rated glass products. Plaintiff's condominium unit includes three sliding glass doors (two on the ocean side), and one or two windows on the street side corridor. At the time this lawsuit was filed, the street side windows and the street side sliding glass door in the condominium unit were original to the building (non-EFCO products). In the fall of 2010, the two ocean side sliding glass doors in Plaintiff's unit were replaced with EFCO sliding glass doors. Prior to renovations made to Buildings C and D in 2013-2014, Plaintiff's unit had hurricane shutters that existed to protect the sliding glass doors from glass breakage in the event of a hurricane.

In approximately 2002, Shipwatch began a relationship with Carolina Concrete Systems, Inc. ("CCS") for periodic building inspections and improvements/repairs. The Board of Directors at Shipwatch chose to undertake a piece meal repair and replacement of the synthetic stucco cladding on the building from 2002-2010. At various points between 2003 and 2010, the Board of Directors also authorized CCS to replace a number of the original windows and sliding glass doors. For example, 72 sliding glass doors were replaced on floors 1-3 of the four buildings in the 2003-2004 timeframe. In 2008, approximately 14 sliding glass doors were replaced on the 4th

¹ As argued in EFCO and WCJ's memorandum filed in support of summary judgment in the companion case filed by the Shipwatch Regime, the individual condominium unit owners have the responsibility to maintain and replace the glass in the sliding glass doors and windows under the Master Deed. Because the claims against EFCO and WCJ allege deficiencies with the glass of the windows and doors, the individual unit owners, not the Regime, own and control the claims against EFCO and WCJ.

and 5th floors. An additional 17 sliding glass doors, approximately, were replaced in 2009, and approximately 18 sliding glass doors were replaced in 2010. Like the original windows and doors, none of the product installed at Shipwatch between 2003 and 2010 by CCS contained impact rated glass.

EFCO, a Missouri based company, manufactures commercial grade windows and sliding glass doors. From 2003-2010, it manufactured and sold impact rated products and non-impact rated products. From 2003-2010, WCJ was the distributor of EFCO products in South Carolina. During that time, WCJ offered impact rated and non-impact rated products for sale to commercial contractors in this area. EFCO manufactured and WCJ sold window and door products installed into the Shipwatch buildings between 2003 and 2010. Neither EFCO nor WCJ had any responsibility for the installation of windows and sliding glass doors at Shipwatch.

Charleston Glass and Mirror Company, Inc. ("Charleston Glass") is in the business of installing windows and doors on commercial projects in the Charleston County area. The company was incorporated in 1964. Randy Morgan is the President of Charleston Glass. Charleston Glass has purchased EFCO products from WCJ since approximately 1995. In 2003, Charleston Glass contacted WCJ about purchasing certain EFCO products and submitted a purchase order. WCJ was Charleston Glass' only contact for EFCO product; Charleston Glass did not have direct contact with EFCO.

As part of its sales process, WCJ has its customers fill out an order form and confirm that they are asking for the products that WCJ intends to supply. In 2004, Randy Morgan signed a WCJ order form and confirmed that Charleston Glass wanted to purchase EFCO product that did not contain impact rated glass. The process repeated itself for orders in 2008, 2009, and 2010. On each occasion, Charleston Glass confirmed that it intended to order EFCO products with non-

impact glass. With each order, EFCO extended a Limited Warranty for the products supplied. The Limited Warranty represents that the products will be free from material defects and disclaims implied warranties of merchantability and fitness for a particular purpose.

In addition to the order forms, various proposals of Charleston Glass and CCS that were reviewed by Shipwatch establish that the contractors intended to purchase non-impact rated EFCO products. A November 11, 2010, fax from Mr. Morgan at Charleston Glass to the head of CCS explains that the contractors did not believe impact rated products were necessary for the projects they were performing at Shipwatch. This communication was made because a question was raised by Gary Freeman, an architect retained by the Shipwatch Regime to observe and report on construction, about the non-impact rated EFCO window and door product that was being installed in the building in 2010. Neither WCJ nor EFCO were involved in this communication.

During construction, Mr. Freeman reported concerns to the Shipwatch Regime's designated agent, Linda Jernigan, about the non-impact rated EFCO products. Mr. Freeman informed Ms. Jernigan and the Shipwatch Regime that the contractor was required to use impact rated glass for window and door products being installed in the buildings in 2010. In response to Mr. Freeman's concerns about the sliding glass doors, Ms. Jernigan wrote,

"Gary,
The board considers the siding doors regular maintenance, they chose the doors they wanted and approved the installation in 2002, so it is not requesting your assistance in this project."

Jernigan Deposition, Exhibit 134.

Clearly, Plaintiff did not reject the non-impact rated EFCO products being installed at Plaintiff's condominium unit and permitted them to become part of the building system. No request was

made in 2010 for WCJ to sell or EFCO to manufacture different product. No request was made by CCS or Charleston Glass that impact glass be provided.

Plaintiff alleges causes of action against EFCO and WCJ for negligence, breach of warranties, and strict liability relating to its supply of non-impact rated glass products to the Shipwatch project. To support its claims against the Defendants, Plaintiff has disclosed Jeff Miller, PE with Sutton Kennerly & Associates and Peter Sherratt, AIA as testifying expert witnesses. Mr. Miller and Mr. Sherratt are to offer opinions as to the nature of the problems with the buildings at Shipwatch and the cause of the damages.²

As part of a comprehensive building evaluation in 2012, Mr. Miller asked his project team to conduct water testing of various portions of the building, including windows and doors. The water testing of the windows and doors was conducted in such a manner that Mr. Miller's team could test the method of installation of the windows and doors in one test and the window and door products themselves in other tests. The testing ordered by Mr. Miller revealed no deficiencies in the EFCO products supplied to the job, as the EFCO products passed the water tests.

After concluding his investigation of the buildings, Mr. Miller was asked to design a repair for buildings C & D at Shipwatch. Mr. Miller's originally conceived repair for buildings C & D included the EFCO product that was then installed in the buildings. Because of the scope (removal and replacement of all windows and doors in the buildings) and timing of the repairs being made at Shipwatch, the Isle of Palms building official required the design to include impact rated products for all window and door openings. Therefore, Mr. Miller could not incorporate the non-impact rated EFCO products into the final design to repair the buildings.

² To date, Mr. Miller has been deposed for three days and Mr. Sherratt has been deposed for one day. Greg Isaacs, an engineer with Sutton Kennerly and Associates who worked with Mr. Miller on the project, has also been deposed for three days.

Plaintiff's experts admit that the EFCO products are not contributing or causing any water intrusion at the buildings. Likewise, they admit that no property damage has resulted from the EFCO products. Plaintiff's experts have not pointed to any defect with the product, and the undisputed evidence is that the product has performed as intended.

I. BECAUSE PLAINTIFF HAS NOT SUSTAINED PROPERTY DAMAGE OR INJURY FROM THE NON-IMPACT GLASS, THE PLAINTIFF'S CLAIMS SHOULD BE DISMISSED

The Plaintiff has sued EFCO and WCJ for negligence, breach of warranties, and strict liability. To recover, each of these causes of action require the Plaintiff to prove that the product caused property damage or injury. Because the EFCO window and door products have not caused property damage or injury, the causes of action should be dismissed.

To recover on its negligence action, the Plaintiff must prove (1) a duty of care owed to the Plaintiff by EFCO and WCJ; (2) a breach of the duty by a negligent act or omission by EFCO and WCJ; and (3) damages proximately resulting from the breach. Crolley v. Hutchins, 387 S.E.2d 716 (S.C. Ct. App. 1989). Likewise, a strict liability claim under section 15-73-20 of the South Carolina Code requires the Plaintiff to prove "physical harm caused to the ultimate user or consumer, or to his property. . ." Finally, Plaintiff cannot recover on its warranty claims without proving the alleged product defects caused property damage or injury. Wilson v. Style Crest Products, Inc., 627 S.E.2d 733 (S.C. 2006).

Wilson is a remarkably similar case where the Supreme Court of South Carolina affirmed the granting of summary judgment because the plaintiff class could not prove that allegedly defectively designed and assembled mobile homes had suffered any damages from high wind events. The Wilson mobile home owner class plaintiffs asserted claims for negligence, negligence per se, breach of express warranty, breach of implied warranty of workmanlike

service, breach of implied warranty of merchantability, fraud and misrepresentation, negligent misrepresentation, and fraudulent concealment. On appeal, the plaintiffs dropped the negligence claims and argued that they could recover on the warranty and fraud claims despite the fact that the owners' property had not been damaged or injured. The South Carolina Supreme Court disagreed and found that the lack of damages meant that the mobile homes had performed satisfactorily and were, in fact, merchantable. Accordingly, the court affirmed the granting of summary judgment by the trial judge.

As in Wilson, the Plaintiff, through its expert, has admitted that the non-impact rated EFCO windows and doors are performing and have not caused any damage to Plaintiff's unit or the Shipwatch buildings in whole. The following exchanges took place at the most recent deposition of Mr. Miller:

Q. The fact that buildings A and B have non-impact windows and doors installed in the buildings, is the fact that those windows and doors are non-impact causing any damage to the building?

A In and of itself, I would say no.

Miller, Jeff - Vol. 3, (Page 609:24 to 610:03)

Q. Did the presence of non-impact glass in those windows and doors lead to any damage to buildings C and D?

A No damage, fortunately, because we had no hurricane blow through there. But no.

Miller, Jeff - Vol. 3, (Page 610:9 to 610:13).

Like in Wilson, the failure to prove damages caused by the allegedly defective product is fatal to Plaintiff's claims.³ Accordingly, the claims should be dismissed.

II. NO EVIDENCE OF A DEFECT WITH THE PRODUCT HAS BEEN PRESENTED BY PLAINTIFF

Plaintiff cannot recover on any of its product liability claims against EFCO and WCJ unless it can prove that the EFCO products were defective in some way. The strict liability claim requires Plaintiff to prove that the product was sold in a defective condition and is unreasonably dangerous. Similarly, a claim for breach of implied warranty of merchantability requires the Plaintiff to prove that the products were not "fit for the ordinary purposes for which [they] are used" and that they would not "pass without objection in the trade under the contract description." S.C. Code Ann § 36-2-314.

Plaintiff has presented no evidence that the product is defective or that it is unreasonably dangerous. In fact, the only evidence is that the EFCO products are performing as intended. As indicated above, the failure to prove damages resulting from an allegedly defective product is evidence that a product is merchantable and not defective. Wilson, 627 S.E.2d at 736. Because no evidence of a defective product has been presented by Plaintiff, the claims against EFCO and WCJ should be dismissed.

III. EFCO AND WCJ HAVE NO LIABILITY FOR SELLING SOPHISTICATED CUSTOMERS EXACTLY WHAT WAS ORDERED

Charleston Glass, WCJ's customer, purchased exactly what it intended to purchase, non-impact rated window and door products from EFCO. The documents to the transaction establish that the window installation contractor that has been in business since the 1960s knew what it

³ It should be pointed out that Plaintiff had already removed and replaced the EFCO products from buildings C and D at the time of Mr. Miller's deposition. The removal and replacement of the EFCO products from buildings A and B are underway.

was purchasing. The records further reflect that CCS knew it was obtaining non-impact rated products, and, in 2010 at a minimum, the Plaintiff, through the Shipwatch Regime agents, knew that it was receiving non-impact rated products. There is no dispute Charleston Glass, CCS, nor Plaintiff ever paid for impact rated windows and doors. EFCO and WCJ willingly would have supplied the products.

A. Plaintiff cannot establish that EFCO or WCJ had a duty to sell impact rated products.

In furtherance of its negligence claim, Plaintiff seeks to invent a duty that it alleges WCJ and EFCO had when selling and/or manufacturing window and door products for the Shipwatch project. Through one of its experts, Plaintiff appears prepared to argue that WCJ, as a product distributor, has a duty to advise its customers on the requirements and conditions of the building codes that might be applied by the jurisdiction where the construction is taking place as it relates to window and door building components. While the testimony is less clear from Plaintiff's expert, Mr. Sherratt appears prepared to offer the same opinion against the product manufacturer, the Missouri based EFCO. Therefore, Plaintiff appears to argue that the terms and conditions of the commercial contract between WCJ and Charleston Glass are meaningless.

The terms of the agreement between WCJ and Charleston Glass, however, are of paramount importance. Both companies are commercially sophisticated entities. Charleston Glass had the option to order impact glass or non-impact glass from WCJ. It unequivocally made the informed decision to purchase non-impact rated glass. The only duty WCJ owed was to provide its customer what it promised to provide through the order agreement. Plaintiff's theory would require a vendor of a product to essentially become a building designer and dictate what products should and should not be used in the construction of buildings. It is a novel theory with no precedent in the law or in the construction materials industry.

Plaintiff's theory is an even greater stretch when applied to EFCO, the manufacturer of the door and window products. EFCO did not have direct contact with Charleston Glass concerning the purchase of products or the location of the project. WCJ simply informed EFCO as to what Charleston Glass intended to purchase. In return, EFCO fabricated the products requested and supplied them to Charleston Glass.

While novel, Plaintiff's theory is akin to a "failure to warn" negligence claim. Products liability law is clear that there is no duty to warn of dangers when the customer purchasing the products in question has equal or greater knowledge about the dangers of the products than the supplier or manufacturer. See Lawing v. Trinity Mfg. Inc., 749 S.E.2d 126 (S.C. Ct. App. 2013)(confirming that the sophisticated user doctrine is the law of South Carolina). Because Charleston Glass was a sophisticated glass contractor and had knowledge of the performance limitations of the glass contained within the window and door products it chose to purchase, WCJ had no duty to warn or to advise Charleston Glass or Plaintiff concerning any potential dangers associated with the non-impact glass that was selected for purchase.

Because the law does not support Plaintiff's theory of the duty it alleges EFCO and WCJ owed in regards to the sale of non- impact rated windows and doors, Plaintiff's claim for negligence fails and should be dismissed.

B. Plaintiff cannot succeed on a claim for breach of warranty for a particular purpose because WCJ and EFCO did not recommend or suggest the use of products with non-impact glass

Where implied warranties are not disclaimed, section 36-2-315 of the South Carolina Code creates an implied warranty for situations where the buyer relies on the skill and judgment of a seller to furnish suitable goods. Plaintiff has presented no evidence to suggest that

Charleston Glass was relying on WCJ or EFCO to furnish the “suitable goods” for the Shipwatch project. The only evidence is that Charleston Glass knowingly and intentionally purchased non-impact rated windows and doors instead of impact rated products offered for sale by WCJ and EFCO because it believed that non-impact rated products were acceptable for the projects.

C. EFCO and WCJ disclaimed all implied warranties

The warranty claims also fail because EFCO and WCJ disclaimed all implied warranties as part of the sale of the commercial windows and sliding glass door products to Charleston Glass. The first page of the limited warranty document contains a paragraph that states “[t]here are no warranties which extend beyond the description on the face hereof,” and the final sentence in the document states that “[t]here are no other expressed or implied warranties from EFCO.” The only warranty made in the limited warranty document is a limited express warranty. Plaintiff’s implied warranty claims are barred by the clear disclaimers of warranties that are clearly communicated in the limited warranty document.

Plaintiff has asserted claims against EFCO and WCJ alleging that they breached implied warranties of merchantability and fitness for a particular purpose. The general rule is that “a warranty that [] goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.” S.C. Code Ann. § 36-2-314(1) (1976). Implied warranties, however, may be disclaimed by the seller’s language. S.C. Code Ann. § 36-2-316 (1976). Under section 36-2-316(2) of the South Carolina Code, the implied warranty of merchantability is disclaimed where the purported disclaimer (1) mentions “merchantability”, (2) is conspicuous if in writing, and (3) is specific so as not to create an ambiguity in the contract. S.C. Code Ann. § 36-2-316(2).

EFCO and WCJ specifically disclaimed the implied warranty of merchantability and fitness for a particular purpose when it sold products to Charleston Glass for use in the Plaintiff's project by including the written disclaimers in the limited warranty document in such a way that the disclaimer referenced the word "merchantability" and the customer was aware of the disclaimers. Using bold font in a paragraph in the middle of the first page of the document and set apart from other language in regular font, EFCO and WCJ disclaimed the implied warranties of merchantability and fitness for a particular purpose by stating: **"EFCO CORPORATION excludes any implied warranties of merchantability and fitness for a particular purpose."**

The disclaimer made by EFCO and WCJ specifically states the word "merchantability" and thereby satisfies the first requirement of section 36-2-316(2) of the South Carolina Code. Likewise, the disclaimer meets the second and third elements of section 36-2-316(2), as it was conspicuous and was not likely to create an ambiguity. Language is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. S.C. Code § 36-1-201(10). It must be in a distinctive color or type. *Id.* ("Language in the body of a form is 'conspicuous' if it is in larger or other contrasting type or color."). Factors to be considered in determining whether a written disclaimer is conspicuous for purposes of § 36-2-316(2) include the following:

- (1) the color of print in which the purported disclaimer appears; (2) the style of print in which the disclaimer is written; (3) the size of the disclaiming language, particularly in relation to other print in the document; (4) the location of the disclaimer in the contract; (5) the appearance of the term "merchantability" with respect to color, style, size, and type of print in the disclaimer clause; and (6) the status of the parties contesting the validity of the disclaimer, namely whether they be consumers or commercially sophisticated entities.

Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 843 F. Supp.1027, 1038 (D.S.C. 1993). The factors listed above are not individually dispositive nor are they exhaustive of all the criteria that can be used in examining a disclaimer. Id.

EFCO and WCJ's disclaimer of the implied warranty of merchantability and fitness for a particular purpose meets the conspicuous requirement of section 36-2-316(2) because it is set forth as a separate paragraph in the middle of the first page of the document and styled in bold font where the remainder of the language on the page is not in bold font. Accordingly, Plaintiff's claims for relief under any implied warranty theory should be dismissed.

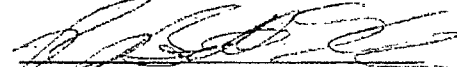
IV. THE CROSS CLAIMS OF CCS SHOULD ALSO BE DISMISSED AS THEY ARE DERIVATIVE CLAIMS

CCS has asserted cross claims against EFCO and WCJ asserting various theories of liability based on the general argument that EFCO and WCJ are responsible for any damages claimed by Plaintiff. For the same reasons discussed above, CCS' claims against EFCO and WCJ fail and should be dismissed. Additionally, the CCS claims are really just disguised indemnity claims. There is no contract between CCS and EFCO or CCS and WCJ. Accordingly, there are no contractual indemnity claims that can be advanced by CCS against EFCO or WCJ. Any claim for equitable indemnity fails because of the lack of a special relationship and the unclean hands of CCS in contributing to the damages it alleges are the responsibility of EFCO and WCJ.

CONCLUSION

For the reasons stated above, all claims of the Plaintiff and CCS against EFCO and WCJ should be dismissed.

ROSEN, ROSEN & HAGOOD, LLC



R. Britton Kelly, Esquire

151 Meeting St Ste. 400 (29401)

P.O. Box 893

Charleston, S.C. 29402

Attorneys for Defendant EFCO

***Corporation & WC Johnston Architectural
Sales, Inc.***

Charleston, South Carolina
January 14, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3858

Appellate Case No. 2014-002765

RECEIVED

APR 13 2015

SC Court of Appeals

Oscar Mendiondo, individually and as representative of a class of similarly
situated owners of condominium units in the horizontal property regime known
as Shipwatch Condominiums, ...Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Which Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.; EFCO
Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors,
LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually,
are..... Respondents.

**APPELLANT'S RETURN TO ACROCRETE, INC.'S AND GLASSTEC, INC.'S JOINT
MOTION TO DISMISS APPEAL**

R. Patrick Flynn
Christopher M. Ramsey
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
(843) 723-6470
Attorneys for Appellant

On April 2, 2015, Appellant received Acrocrete, Inc.'s and Glasstec, Inc.'s Joint Motion to Dismiss Appeal as to those respondents (hereinafter "the Motion"). Acrocrete and Glasstec take the position that they should be dismissed from this appeal because they are not "adverse parties" to the Appellant. That position is without merit and unsupported by the South Carolina Appellate Court Rules or case law, and this Joint Motion must be denied.

These Respondents attempt to justify their position from the language of Rule 202(a), SCACR. However, that rule only provides guidance as to the proper nomenclature of the parties in an appeal, and does not provide any guidance as to the qualifications of either party to an appeal. Indeed, the rule only employs the term "adverse party" in order to distinguish the relative positions of the appellant and the respondent. "The party appealing shall be known as the appellant and the adverse party as the respondent." Id.

It is not disputed that Acrocrete and Glasstec are defendants in the underlying cases now on appeal. Additionally, Acrocrete and Glasstec do not dispute in their Joint Motion that they performed work on the Shipwatch project as subcontractors to Respondent Carolina Concrete Systems, as alleged in the Complaint. Appellant asserted that Acrocrete and Glasstec were negligent in the performance of their work at Shipwatch, among other causes of action. Acrocrete and Glasstec denied those allegations, thus taking an adverse position to Appellant in this matter.

A plain reading of the hearing transcript indicates that the lower court denies Appellant's right to assert any claims for work performed at the Shipwatch project prior to 2010. Transcript of Motion Hearing October 27, 2014, at p. 6. Appellant alleges in the Complaint that Acrocrete and Glasstec performed work at the project before 2010, thus making the substance of this appeal applicable to the claims and defenses relating to these two Respondents, which fully justifies their

inclusion as Respondents which are affected by the matter in this appeal.

Acrocrete and Glasstec are not, however, required to file a separate Brief of Respondent if they choose not to do so. Rule 208(b)(6), SCACR, provides: "In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another."

Moreover, it is appropriate to have all parties affected by the appeal, especially those who have taken adverse positions in the matter on appeal, included as Respondents in order to ensure that they receive copies of all filings and communications from the parties and the Court, in order to allow them the opportunity to submit briefs and participate as they deem appropriate.

Based upon the foregoing, the joint motion by Acrocrete and Glasstec must be denied, as they are adverse parties to Appellant and are properly included as Respondents in this Appeal.

Respectfully submitted,

ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting St., Suite 300
Charleston, South Carolina 29401
(843) 723-6470
(843) 853-9045 fax

By:



R. Patrick Flynn

Christopher M. Ramsey

Attorneys for Appellant

Charleston, South Carolina

April 10, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-3857

FILED
2015 JUL 28 PM 3:59
JULIE J. ROBERTSON
CLERK OF COURT
BY _____

Shipwatch Condominium Association, Inc., ... Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually, ... Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,
individually,
are Respondents

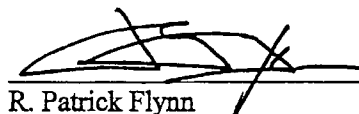
NOTICE OF APPEAL

The Shipwatch Condominium Association, Inc. hereby appeals the Order granting Summary Judgment in Part to Carolina Concrete Systems, Inc. That motion was heard October 27, 2014, and the Order filed on July 28, 2015.

An appeal was filed on December 30, 2014 as to the oral order of October 27, 2014 granting Summary Judgment in part to Carolina Concrete Systems, and as to the denial of Appellant's Motion for Rehearing entered on December 5, 2014. That previous appeal was dismissed by the South

Carolina Court of Appeals on July 2, 2015, on the basis that a written order had not been entered by the lower court. The above-described written order was entered on July 28, 2015, and this Notice of Appeal is for that written order.

July 28, 2015



R. Patrick Flynn
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Attorney for Appellant

Other Counsel of Record:

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901
(P) 843-524-1116
ATTORNEYS FOR GLASSTEC, INC.

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun St., Suite 400
Charleston, SC 29401
(P) 843-266-8237
**ATTORNEYS FOR SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

AND

J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
(P) 843 723-0185

ATTORNEYS FOR FIRST EXTERIORS, LLC

David S. Cobb, Esquire
Jennie Smith, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
(P) 843-576-2800
ATTORNEYS FOR CAROLINA CONCRETE SYSTEMS, INC.

David A. Root, Esquire
Kernodle Root & Coleman
914 Golly Road, Suite 2
Charleston, SC 29412
(P) 843-795-7800
ATTORNEY FOR BASF AND SONNEBORN

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood
P.O. Box 893
Charleston, SC 29402
(P) 843-577-6726
**ATTORNEY FOR EFCO CORP. AND W.C. JOHNSTON
ARCHITECTURAL SALES, INC.**

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
(P) 577-7700
**ATTORNEY FOR GARY FREEMAN, ARCHITECT AND
GARY FREEMAN, INDIVIDUALLY**

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550
ATTORNEY FOR GLASGOW ROOFING

Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
(P) 843-766-8101
ATTORNEYS FOR CHARLESTON GLASS COMPANY, INC.

Greg Horton, Esquire
Ryan Gilsenan, Esquire
Adriane Belton, Esquire
Womble Carlyle
5 Exchange Street
Charleston, SC 29401
(P) 843-722-3400
ATTORNEYS FOR ACROCRETE, INC.

Terence McKelvey
1084 Winslow Drive
Charleston, SC 29412
(P) 843-559-5074
PRO SE DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Shipwatch Condominium
Association, Inc.)

Plaintiff,)

v.)

Carolina Concrete Systems, Inc.;)
Sisnroy Engineering, LLC; Robert G.)
Sisnroy, individually; Terrence J.)
McKelvey; Glasgow Roofing, Inc.;)
GlassTec, Inc.; Spectech, Inc.;)
Sonneborn, Inc.; Chimney Sweeps,)
Inc.; Low Country Chimneys, Inc.;)
EFCO Corp.; W.C. Johnston)
Architectural Sales, Inc.; Charleston)
Glass Company, Inc.; First Exteriors,)
LLC; Acrocrete, Inc.; BASF Corp.;)
Gary Freeman Architect, Inc.; Gary)
Freeman, individually,)

Defendants.)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Oscar Mendiondo individually and)
as representative of a class similarly)
situated Owners of Condominium)
Units in the Horizontal Property)
Regime known as Shipwatch)
Condominiums)

Plaintiffs,)

v.)

Carolina Concrete Systems, Inc.;)
Sisnroy Engineering, LLC; Robert G.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3857

ORDER GRANTING DEFENDANT
CAROLINA CONCRETE SYSTEMS,
INC. PARTIAL SUMMARY
JUDGMENT

FILED
2015 JUL 28 PM 12:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3858

Sisroy, individually; Terrence J.)
 McKelvey; Glasgow Roofing, Inc.;)
 GlassTec, Inc.; Spectech, Inc.;)
 Sonneborn, Inc.; Chimney Sweeps,)
 Inc.; Low Country Chimneys, Inc.;)
 EFCO Corp.; W.C. Johnston)
 Architectural Sales, Inc.; Charleston)
 Glass Company, Inc.; First Exteriors,)
 LLC; Acrocrete, Inc.; BASF Corp.;)
 Gary Freeman Architect, Inc.; Gary)
 Freeman, individually,)
)
 Defendants.)
)

This matter came before the Court on Defendant Carolina Concrete Systems, Inc.'s ("CCS") summary judgment motion based on the statute of limitations. As discussed in this order the court grants partial summary judgment. This Order does not dismiss the entire litigation and allows Plaintiffs to continue the lawsuit for claims concerning work not barred by the statute of limitations.

Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served CCS on July 12, 2012. The Shipwatch project consists of four oceanfront buildings constructed around 1985 with EIFS exterior cladding. Neither CCS nor any of the defendants in this litigation had any involvement with the original construction.

From 2002-2010, CCS acted as the general contractor for various piece-meal repairs and renovations to the buildings at the direction of the Shipwatch Homeowners' Association ("HOA") and various on-site property managers. The work included partial replacement of some (but not all) of the original EIFS (Exterior Insulation Finish System) cladding with a Durock Wall System ("DEFS"); removal of some (but not all) original windows and sliding glass doors at certain locations on the endwalls, ocean-side, and street-side elevations; reframing of chimneys; and recoating of certain balcony and corridor decks. CCS' contracts with Plaintiffs included:

November 5, 2002: Contract for chimney repairs, waterproofing repairs, corridor/balcony repairs, and traffic coatings;

September 22, 2003: Contract for re-sloping of balconies, window and door repairs, removal of EIFS and replacement with Durock Stucco System on endwalls and fourth and fifth floor streetside, removal and replacement of stucco at stairwell and elevator towers, repairs to privacy walls and chimneys; and

December 19, 2008: Contract for removal and replacement of 16 EFCO doors in specified units.

The work took place primarily between 2002-2005 and 2008-2011.

STANDARD FOR STATUTE OF LIMITATIONS

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. A person has constructive notice of a cause of action if he or she knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right . . . has been invaded or that some claim against another party might exist." Id. "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The analysis is an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury.

Likewise, the inability of the plaintiff to discover evidence of culpability against a particular defendant within the limitations period is irrelevant. Republic

Contracting Corp., South Carolina Dept. of Highways and Public Transportation, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998). In addition, the "[f]ailure of the injured party to comprehend the full extent of the damages . . . is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994).

In Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), the Court wrote:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote response by giving security and stability to human affairs." The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, "statutes of limitations provide potential defendants with certainty that after a period of time, they will not be haled [sic] into court to defend time-barred claims. Moreover, limitation periods discourage plaintiffs from sitting on their rights." Statutes of limitations are, indeed, fundamental to our judicial system.

Id., 363 S.C. at 175-176, 609 S.E.2d at 552 (citations omitted).

Statutes of limitations "are designed to promote justice by forcing parties to pursue a case in a timely manner." State ex rel. Condon v. City of Columbia, 528 S.E. 2d 408, 413 (S.C. 2000). These statutes "encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately." Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 706 (S.C. Ct. App. 1999), aff'd, 534 S.E.2d 672 (S.C. 2000), overruled in part on other grounds, 606 S.E.2d 475 (S.C. 2004). Thus, as the South Carolina Court of Appeals has observed:

Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. . . . Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. . . . One purpose of a statute of limitations is to 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' . . . Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. . . .

City of N. Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 2004)
(internal citations omitted).

DISCUSSION

The applicable statute of limitations is three years.¹ CCS does not dispute that any work performed after the applicable date for statute of limitations purposes should not be included with this order; CCS challenges, however, certain claims based on notice to Plaintiffs that implicates the statute of limitations. Thus, the inquiry is what Plaintiffs knew or should have known before July 12, 2009.

Plaintiffs' assert in this litigation that CCS and the other defendants should be liable for the costs associated with the repairs arising from the failure of original building components such as EIFS and original sliding glass doors and windows (which were not installed, repaired, or replaced by CCS or any of the defendants in this litigation); however, the applicable statutes of limitations bar those claims because the undisputed facts show that Plaintiffs knew about water intrusion and alleged construction defects more than three years before commencing this litigation.

A. THE UNDISPUTED TESTIMONY FROM PLAINTIFFS' BOARD MEMBERS AND REGIME MANAGER IS THAT PLAINTIFFS KNEW ABOUT MANY OF THE ISSUES THEY ASSERT IN THIS LITIGATION WELL BEFORE ANY THREE-YEAR PERIOD INVOLVING THE STATUTE OF LIMITATIONS

Plaintiffs clearly knew about various water intrusion issues at the Shipwatch project at least 5-10 years before filing this litigation and, clearly, well before July 12, 2009 (three years before Plaintiffs served CCS with pleadings). In fact, many of the damages claimed in this lawsuit were recommended to Plaintiffs for replacement in 2008 by Plaintiff's regime manager because of water intrusion or

¹ S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, aiding and abetting a breach of fiduciary duty, breach of contract, common-law warranty, and strict liability in tort. Further, S.C. Ann. § 39-5-150 provides a three-year statute of limitations on Plaintiffs' claims under the South Carolina Unfair Trade Practices Act.

Rad/s

other damage. In addition, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew about water intrusion problems into the buildings in 2003. Deposition of Arnie Schaewe, page 35, lines 9-19. Further, Schaewe testified Plaintiffs had leakage problems at various locations including the end walls, oceanside sliding glass doors, and bay windows when CCS began work in 2002-2003. Id., page 35, line 9-page 37, line 22.

Accordingly, the statute of limitations bars the following claims:

Originally-installed EIFS (Exterior Insulation Finish System):

In this litigation, Plaintiffs demanded CCS pay for the costs of removing the remaining EIFS on the exterior of the buildings and replacing the exterior cladding on the buildings; even though CCS never installed the EIFS and Plaintiffs knew about damage and water intrusion associated with EIFS by the mid-2000s. For example, Plaintiffs' former board member Fred Trombino testified that during his tenure on the board between 2005-2007, the board knew EIFS was problematic and not the right application for a coastal environment. Deposition of Fred Trombino, page 37, line 24-page 38, line 6. Specifically, Trombino said the board knew that water tended to get trapped behind EIFS, which caused the metal studs to rot and fail. Id. page 38, lines 11-17. However, the board elected not to further inspect the buildings at that time because it had decided to remove the EIFS cladding. Id. page 38, lines 18-25.

The regime manager (Linda Jernigan), whom Plaintiffs have employed since 2005, testified she told Plaintiffs in September 2008 that she had obtained a contract to remove and replace the originally-installed EIFS off of all buildings at a projected cost of \$1,800,000 (or approximately \$423,060 per building). Deposition of Linda Jernigan, page 330, line 2-page 331, line 18. The September 2008 HOA Board Minutes also detailed that Jernigan told Plaintiffs that the buildings showed water intrusion problems when they opened up the buildings previously for EIFS removal at certain locations and that Plaintiffs should anticipate additional

problems if Plaintiffs moved forward with her recommendation about complete removal of the remaining EIFS. Id., page 333, line 14-page 335, line 10.

Originally-installed sliding glass doors:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed sliding glass doors and replacing those doors with modern versions, even though CCS never installed the original sliding glass doors and Plaintiffs knew about damage and water intrusion associated with leaking sliding glass doors by the mid-2000s. Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the oceanside sliding glass doors when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. In September 2008, Jernigan recommended Plaintiffs remove and replace the "leaking sliding glass doors" because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years. Deposition of Jernigan, page 332, line 15-page 333, line 13. Jernigan testified that leaking sliding glass doors have been a problem at Shipwatch since she returned to manage the property in February 2005. Id., page 219, lines 8-18; page 230, lines 9-12.

Trombino testified he knew about leaking sliding glass doors when he joined the Board in 2005 when Jernigan told him the project had problems with the sliding glass doors. Trombino, page 132, line 22-page 133, line 14. Beginning in 2006, the Board replaced a certain number of leaking sliding glass doors (approximately 10-15 per year) based mainly upon homeowner complaints. Schaewe, page 78, line 11-page 79, line 6.

In addition, HOA Board meeting minutes between 2005-2007 clearly reflect Plaintiffs' knowledge and ongoing discussions about repairing and replacing leaking sliding glass doors. In 2005, the Board noted leaks continued at some sliding glass doors, including the fifth floor penthouse doors likely caused by sunlight deteriorating the rubber seals and caulking. See Shipwatch Board of Directors Meeting, April 1, 2005, page 2; and Shipwatch Board of Director Meeting,

RND/7

September 16-17, 2005, page 2. In 2006, the Board discussed that leaking sliding glass doors continued to be problematic, and the leaking persisted despite repairs using caulk. See Shipwatch Board of Directors Meeting, March 18, 2006, page 10 (Exhibit 3).

In 2006 and 2007, Plaintiffs also received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb.

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with . . . a number of sliding glass doors. . . . The regime has put forth concerted effort over the years to remedy this problem by caulking." See Building Report, March 9, 2007, page 2. However, leaks continued at the fourth and fifth floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources." See Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007, page 2.

The September 13, 2008 HOA Board meeting minutes stated: "Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over \$10,000 per door as they are not stock doors and must be custom made - the cost is for taking off the old door, replacing and shim the door to fit, plus caulking."

RW/8

Originally-installed windows:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed windows and replacing them with enhanced windows, even though CCS never installed those windows and Plaintiffs knew about damage and water intrusion associated with leaking windows by the mid-2000s. As discussed, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the original bay windows when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. Jernigan noted leaking bay windows in 2007. Deposition of Jernigan, page 307, lines 12-21.

Deck coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior deck coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2008. For example, in September 2008, Jernigan recommended Plaintiffs remove and replace the deck coatings. Deposition of Jernigan, page 332, line 15-page 333, line 13. The September 2008 HOA Board meeting minutes stated, "[t]he Board previously passed on coating the decks because we needed to have money to do other projects . . . and let the warranty expire. If the decks are not recoated very soon, they will deteriorate to point buildings will have to be closed and decks completely redone." Id. The minutes reflected Jernigan "highly recommended" this work. Id. The minutes further reflected the Board's acknowledgment in 2008 that the balcony deck recoating, along with the recommended EIFS replacement and sliding glass door replacement, "were items that either were 'on-going' or [had] been held back from years previous." Id.

Ruq/9

Balcony ceiling coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the balcony ceiling coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2005. For example, Trombino testified that the breezeway ceilings had "peeling" issues since he started on the board in 2005. Deposition of Trombino, page 43, line 17-page 44, line 2. Schaewe testified that Plaintiffs only "spot repaired" the ceilings from 2002-2013 and that he did not know why Plaintiffs did not make any wholesale repair to the balcony ceiling coatings. Deposition of Schaewe, page 19, lines 2-23.

Handrails

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior handrails throughout the complex even though CCS did not install the original handrails and Plaintiffs knew about damage associated with deteriorated handrails by 2008. For example, in September 2007 and September 2008, the HOA Board meeting minutes discussed the continued need to sand and repaint the railings. The Board decided to remove the repairs to the handrails from the budget "in lieu of more important items." On September 13, 2008, the Board meeting minutes note the decision that the Board "will again delay painting of the railings."

Moreover, Trombino testified CCS is not responsible for the cost of new handrails. Deposition of Trombino, page 44, lines 8-12. Schaewe also testified CCS should not be held responsible for the cost to remove and replace the handrails. Deposition of Schaewe, page 59, line 25-page 60, line 15.

Metal Framing/DEFS

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing metal framing at the buildings even though CCS notified Plaintiffs about damaged metal framing and Plaintiffs elected not to make repairs. The contract

documents showed CCS and its subcontractors removed the original EIFS and replaced it with Durock/DEFS at certain locations on the buildings in two phases (from November 2002-December 2003 and September 2003-May 2004). Schaewe testified that during the removal of the original EIFS cladding in 2003-2004, Plaintiffs knew about rusted studs on the oceanside and endwalls of all four buildings, particularly behind originally-installed EIFS adjacent to originally-installed sliding glass door and windows. Deposition of Schaewe, page 37, lines 1-9.

Between 2005-2007, the board learned that water tended to get behind EIFS and then rotted the studs and caused failure. Deposition of Trombino, page 38, lines 11-17. Trombino testified the board did not elect to hire someone to inspect the buildings at that point because [the board] had already decided to remove the EIFS and replace the studs. Id. page 38, lines 18-25. Significantly, on May 9, 2007, CCS reported to Jernigan, "Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project [in 2003-2004]." Carolina Concrete Systems, Inc. "Inspection Report" dated May 9, 2007, item 14.

On September 6, 2007 CCS issued a proposal for the removal and replacement of the fourth and fifth floor oceanside balcony sliding glass doors. Importantly, the proposal stated the proposed replacement did not include any repair to the metal studs that support the doors or the new installed wall studs, "for we do not know the extent of any damage ... the doors have been leaking since the new [Durock] wall system was installed ... and has allowed water to enter the wall ... and damaged the metal studs in the wall." Carolina Concrete Systems, Inc. Proposal dated September 6, 2007.

On February 5, 2009, CCS again notified Plaintiffs: "Leaks continue to be a problem at and around the old sliding glass doors on the beachfront and golf course side of the buildings. We have repeatedly shown [Jernigan] and numerous board members that these doors are leaking and I am sure there is damage that is

occurring in the new metal stud walls with the Durock system that was installed during 2003/2004. We are in the process of replacing 17 doors and I recommend the remaining old doors be removed and replaced." Carolina Concrete Systems, Inc. "Building Inspection Report" dated February 5, 2009, page 2.

Lack of kickout flashing or drip edge flashing:

On May 22, 2009, Plaintiffs' engineering experts in this litigation (Sutton-Kennerly & Associates, Inc. or "SKA") issued a "Proposal for Engineering Cost Estimate and Design" for the project "... to conduct a cost estimate of the recommended repairs from the Property Assessment and Report by Commercial Building Consultants, dated January 31, 2008 and design details for recommended kickout flashings, drip edge flashing and installation of new EFCO sliding glass doors." SKA's May 22, 2009 proposal reflected Plaintiffs' knowledge based on the January 31, 2008 "Limited Property Assessment Report" about "[o]ther moisture problems [including] lack of a drip edge flashing along the ends of the buildings, and the lack of a kick-out flashing at the transition between the sloped metal roof of the existing stair wells and the exterior facade."

B. THE EVIDENCE MIRRORED OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASE LAW THAT UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.

In Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996), Dean purchased a building in Charleston on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. A second crack also had appeared in another location. After being informed that the building was no longer structurally

RO/12

sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations expired.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[b]ecause Dean had notice in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date." (emphasis in original). Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "Dean's subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved." Id. Moreover, the court said, "The fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Id.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. In addition, HOA board meeting minutes clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement.

CONCLUSION

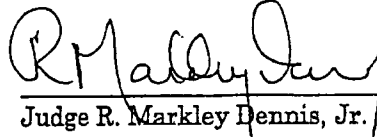
For these reasons, the Court grants partial summary judgment and strikes the claims associated with (a) EIFS; (b) originally-installed sliding glass doors; (c) originally-installed windows; (d) deck coatings; (e) balcony ceiling coatings; (f) handrails; (g) metal framing behind originally-installed EIFS and adjacent to originally-installed sliding glass doors and windows; and (h) lack of kickout flashing

RWJ 13

or drip edge flashing from Plaintiffs' claims in this litigation. See Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996). The litigation continues for the remaining issues.

Charleston, South Carolina

July 27, 2015


Judge R. Markley Dennis, Jr.

RMD/14

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-3857

FILED
2015 JUL 28 PM 4:33
JULIE J. ARMSTRONG
CLERK OF COURT

Shipwatch Condominium Association, Inc., ...Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Whom, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,
individually, are,

..... Respondents.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have
served parties in this action with a copy of the document(s) via U.S. Mail and/or Electronic mail as follows:

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901
(P) 843-524-1116

ATTORNEYS FOR GLASSTEC, INC.

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun St., Suite 400
Charleston, SC 29401
(P) 843-266-8237

**ATTORNEYS FOR SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

AND

J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 1/2 Broad Street
Charleston, SC 29401
(P) 843 723-0185

ATTORNEYS FOR FIRST EXTERIORS, LLC

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
(P) 843-576-2800
ATTORNEYS FOR CAROLINA CONCRETE SYSTEMS, INC.

David A. Root, Esquire
Kernodle Root & Coleman
914 Golly Road, Suite 2
Charleston, SC 29412
(P) 843-795-7800
ATTORNEY FOR BASF AND SONNEBORN

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood
P.O. Box 893
Charleston, SC 29402
(P) 843-577-6726
**ATTORNEY FOR EFCO CORP. AND W.C. JOHNSTON
ARCHITECTURAL SALES, INC.**

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
(P) 577-7700

**ATTORNEY FOR GARY FREEMAN, ARCHITECT AND
GARY FREEMAN, INDIVIDUALLY**

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

and

L. Dean Best, Esquire
P.O. Box 13466
Charleston, SC 29422
(P) 843-793-4744
(F) 843-793-4278

ATTORNEYS FOR GLASGOW ROOFING

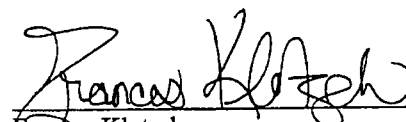
Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
(P) 843-766-8101

ATTORNEYS FOR CHARLESTON GLASS COMPANY, INC.

Greg Horton, Esquire
Ryan Gilsenan, Esquire
Adriane Belton, Esquire
Womble Carlyle
5 Exchange Street
Charleston, SC 29401
(P) 843-722-3400

ATTORNEYS FOR ACROCRETE, INC.

Terrence McKelvey
1084 Winslow Drive
Charleston, SC 29412
(P) 843-559-5074
PRO SE DEFENDANT



Frances Klotsch

July 28, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2012-CP-10-3858

FILED
2015 JUL 28 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Oscar Mendiondo, individually and as representative of a class of similarly situated owners of
condominium units in the horizontal property regime known as Shipwatch Condominiums,
..... Appellant,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually, ... Defendants,

Of Which, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,
individually,
are Respondents.

NOTICE OF APPEAL

Appellants hereby appeal the Order granting Summary Judgment in Part to Carolina Concrete
Systems, Inc. That motion was heard October 27, 2014, and the Order filed on July 28, 2015.

An appeal was filed on December 30, 2014 as to the oral order of October 27, 2014 granting Summary Judgment in part to Carolina Concrete Systems, and as to the denial of Appellants' Motion for Rehearing entered on December 5, 2014. That previous appeal was dismissed by the South Carolina Court of Appeals on July 2, 2015, on the basis that a written order had not been entered by the lower court. The above-described written order was entered on July 28, 2015, and this Notice of Appeal is for that written order.

July 28, 2015



R. Patrick Flynn
ROBERTSON HOLLINGSWORTH & FLYNN
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Phone: 843-723-6470
Attorney for Appellants

Other Counsel of Record:

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901
(P) 843-524-1116
ATTORNEYS FOR GLASSTEC, INC.

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun St., Suite 400
Charleston, SC 29401
(P) 843-266-8237
**ATTORNEYS FOR SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550
AND
J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
(P) 843 723-0185
ATTORNEYS FOR FIRST EXTERIORS, LLC

David S. Cobb, Esquire
Jennie Smith, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
(P) 843-576-2800
ATTORNEYS FOR CAROLINA CONCRETE SYSTEMS, INC.

David A. Root, Esquire
Kernodle Root & Coleman
914 Golly Road, Suite 2
Charleston, SC 29412
(P) 843-795-7800
ATTORNEY FOR BASF AND SONNEBORN

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood
P.O. Box 893
Charleston, SC 29402
(P) 843-577-6726
**ATTORNEY FOR EFCO CORP. AND W.C. JOHNSTON
ARCHITECTURAL SALES, INC.**

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
(P) 577-7700
**ATTORNEY FOR GARY FREEMAN, ARCHITECT AND
GARY FREEMAN, INDIVIDUALLY**

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550
ATTORNEY FOR GLASGOW ROOFING

Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
(P) 843-766-8101
ATTORNEYS FOR CHARLESTON GLASS COMPANY, INC.

Greg Horton, Esquire

Ryan Gilsenan, Esquire
Adriane Belton, Esquire
Womble Carlyle
5 Exchange Street
Charleston, SC 29401
(P) 843-722-3400
ATTORNEYS FOR ACROCRETE, INC.

Terrence McKelvey
1083 Winslow Drive
Charleston, SC 29412
(P) 843-559-5074
PRO SE DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Shipwatch Condominium
Association, Inc.)

Plaintiff,)

v.)

Carolina Concrete Systems, Inc.;)
Sisnroy Engineering, LLC; Robert G.)
Sisnroy, individually; Terrence J.)
McKelvey; Glasgow Roofing, Inc.;)
GlassTec, Inc.; Spectech, Inc.;)
Sonneborn, Inc.; Chimney Sweeps,)
Inc.; Low Country Chimneys, Inc.;)
EFCO Corp.; W.C. Johnston)
Architectural Sales, Inc.; Charleston)
Glass Company, Inc.; First Exteriors,)
LLC; Acrocrete, Inc.; BASF Corp.;)
Gary Freeman Architect, Inc.; Gary)
Freeman, individually,)

Defendants.)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Oscar Mendiondo individually and)
as representative of a class similarly)
situated Owners of Condominium)
Units in the Horizontal Property)
Regime known as Shipwatch)
Condominiums)

Plaintiffs,)

v.)

Carolina Concrete Systems, Inc.;)
Sisnroy Engineering, LLC; Robert G.)

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3857

ORDER GRANTING DEFENDANT
CAROLINA CONCRETE SYSTEMS,
INC. PARTIAL SUMMARY
JUDGMENT

FILED
2015 JUL 28 PM 12:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

IN THE COURT OF COMMON PLEAS

Docket No.: 2012-CP-10-3858

holl

Sisnroy, individually; Terrence J.)
 McKelvey; Glasgow Roofing, Inc.;)
 GlassTec, Inc.; Spectech, Inc.;)
 Sonneborn, Inc.; Chimney Sweeps,)
 Inc.; Low Country Chimneys, Inc.;)
 EFCO Corp.; W.C. Johnston)
 Architectural Sales, Inc.; Charleston)
 Glass Company, Inc.; First Exteriors,)
 LLC; Acrocrete, Inc.; BASF Corp.;)
 Gary Freeman Architect, Inc.; Gary)
 Freeman, individually,)
)
 Defendants.)

This matter came before the Court on Defendant Carolina Concrete Systems, Inc.'s ("CCS") summary judgment motion based on the statute of limitations. As discussed in this order the court grants partial summary judgment. This Order does not dismiss the entire litigation and allows Plaintiffs to continue the lawsuit for claims concerning work not barred by the statute of limitations.

Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served CCS on July 12, 2012. The Shipwatch project consists of four oceanfront buildings constructed around 1985 with EIFS exterior cladding. Neither CCS nor any of the defendants in this litigation had any involvement with the original construction.

From 2002-2010, CCS acted as the general contractor for various piece-meal repairs and renovations to the buildings at the direction of the Shipwatch Homeowners' Association ("HOA") and various on-site property managers. The work included partial replacement of some (but not all) of the original EIFS (Exterior Insulation Finish System) cladding with a Durock Wall System ("DEFS"); removal of some (but not all) original windows and sliding glass doors at certain locations on the endwalls, ocean-side, and street-side elevations; reframing of chimneys; and recoating of certain balcony and corridor decks. CCS' contracts with Plaintiffs included:

Rwj/2

November 5, 2002: Contract for chimney repairs, waterproofing repairs, corridor/balcony repairs, and traffic coatings;

September 22, 2003: Contract for re-sloping of balconies, window and door repairs, removal of EIFS and replacement with Durock Stucco System on endwalls and fourth and fifth floor streetside, removal and replacement of stucco at stairwell and elevator towers, repairs to privacy walls and chimneys; and

December 19, 2008: Contract for removal and replacement of 16 EFCO doors in specified units.

The work took place primarily between 2002-2005 and 2008-2011.

STANDARD FOR STATUTE OF LIMITATIONS

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. "Generally, a cause of action accrues under South Carolina law 'the moment the defendant breaches a duty owed to the plaintiff.'" Barr v. City of Rock Hill, 330 S.C. 640, 644, 500 S.E.2d 157, 159-60 (Ct. App. 1998). In some circumstances, however, the "discovery rule" provides an exception to the general rule and tolls the statute of limitations until such time as "the person knew or by the exercise of reasonable diligence should have known that he had a cause of action." S.C. Code Ann. § 15-3-535. A person has constructive notice of a cause of action if he or she knows of "facts and circumstances of an injury [that] would put a person of common knowledge and experience on notice that some right . . . has been invaded or that some claim against another party might exist." Id. "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The analysis is an objective one, focusing not on the subjective knowledge of the individual plaintiff, but on whether a reasonable person with knowledge of the facts and circumstances should have been placed on notice of an injury.

Likewise, the inability of the plaintiff to discover evidence of culpability against a particular defendant within the limitations period is irrelevant. Republic

10/3

Contracting Corp., South Carolina Dept. of Highways and Public Transportation, 332 S.C. 197, 208, 503 S.E.2d 761, 767 (Ct. App. 1998). In addition, the "[f]ailure of the injured party to comprehend the full extent of the damages . . . is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169 (1994).

In Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), the Court wrote:

Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote response by giving security and stability to human affairs." The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. Significantly, "statutes of limitations provide potential defendants with certainty that after a period of time, they will not be hailed [sic] into court to defend time-barred claims. Moreover, limitation periods discourage plaintiffs from sitting on their rights." Statutes of limitations are, indeed, fundamental to our judicial system.

Id., 363 S.C. at 175-176, 609 S.E.2d at 552 (citations omitted).

Statutes of limitations "are designed to promote justice by forcing parties to pursue a case in a timely manner." State ex rel. Condon v. City of Columbia, 528 S.E. 2d 408, 413 (S.C. 2000). These statutes "encourage plaintiffs to initiate actions promptly while evidence is fresh and a court will be able to judge more accurately." Moriarty v. Garden Sanctuary Church of God, 511 S.E.2d 699, 706 (S.C. Ct. App. 1999), aff'd, 534 S.E.2d 672 (S.C. 2000), overruled in part on other grounds, 606 S.E.2d 475 (S.C. 2004). Thus, as the South Carolina Court of Appeals has observed:

Statutes of limitations are not simply technicalities. On the contrary, they have long been respected as fundamental to a well-ordered judicial system. . . . Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs. . . . One purpose of a statute of limitations is to 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.' . . . Another purpose of a statute of limitations is to protect potential defendants from protracted fear of litigation. . . .

City of N. Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 2004)
(internal citations omitted).

DISCUSSION

The applicable statute of limitations is three years.¹ CCS does not dispute that any work performed after the applicable date for statute of limitations purposes should not be included with this order; CCS challenges, however, certain claims based on notice to Plaintiffs that implicates the statute of limitations. Thus, the inquiry is what Plaintiffs knew or should have known before July 12, 2009.

Plaintiffs' assert in this litigation that CCS and the other defendants should be liable for the costs associated with the repairs arising from the failure of original building components such as EIFS and original sliding glass doors and windows (which were not installed, repaired, or replaced by CCS or any of the defendants in this litigation); however, the applicable statutes of limitations bar those claims because the undisputed facts show that Plaintiffs knew about water intrusion and alleged construction defects more than three years before commencing this litigation.

A. THE UNDISPUTED TESTIMONY FROM PLAINTIFFS' BOARD MEMBERS AND REGIME MANAGER IS THAT PLAINTIFFS KNEW ABOUT MANY OF THE ISSUES THEY ASSERT IN THIS LITIGATION WELL BEFORE ANY THREE-YEAR PERIOD INVOLVING THE STATUTE OF LIMITATIONS

Plaintiffs clearly knew about various water intrusion issues at the Shipwatch project at least 5-10 years before filing this litigation and, clearly, well before July 12, 2009 (three years before Plaintiffs served CCS with pleadings). In fact, many of the damages claimed in this lawsuit were recommended to Plaintiffs for replacement in 2008 by Plaintiffs regime manager because of water intrusion or

¹ S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, aiding and abetting a breach of fiduciary duty, breach of contract, common-law warranty, and strict liability in tort. Further, S.C. Ann. § 39-5-150 provides a three-year statute of limitations on Plaintiffs' claims under the South Carolina Unfair Trade Practices Act.

Ray/s

other damage. In addition, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew about water intrusion problems into the buildings in 2003. Deposition of Arnie Schaewe, page 35, lines 9-19. Further, Schaewe testified Plaintiffs had leakage problems at various locations including the end walls, oceanside sliding glass doors, and bay windows when CCS began work in 2002-2003. Id., page 35, line 9-page 37, line 22.

Accordingly, the statute of limitations bars the following claims:

Originally-installed EIFS (Exterior Insulation Finish System):

In this litigation, Plaintiffs demanded CCS pay for the costs of removing the remaining EIFS on the exterior of the buildings and replacing the exterior cladding on the buildings, even though CCS never installed the EIFS and Plaintiffs knew about damage and water intrusion associated with EIFS by the mid-2000s. For example, Plaintiffs' former board member Fred Trombino testified that during his tenure on the board between 2005-2007, the board knew EIFS was problematic and not the right application for a coastal environment. Deposition of Fred Trombino, page 37, line 24-page 38, line 6. Specifically, Trombino said the board knew that water tended to get trapped behind EIFS, which caused the metal studs to rot and fail. Id. page 38, lines 11-17. However, the board elected not to further inspect the buildings at that time because it had decided to remove the EIFS cladding. Id. page 38, lines 18-25.

The regime manager (Linda Jernigan), whom Plaintiffs have employed since 2005, testified she told Plaintiffs in September 2008 that she had obtained a contract to remove and replace the originally-installed EIFS off of all buildings at a projected cost of \$1,800,000 (or approximately \$423,060 per building). Deposition of Linda Jernigan, page 330, line 2-page 331, line 18. The September 2008 HOA Board Minutes also detailed that Jernigan told Plaintiffs that the buildings showed water intrusion problems when they opened up the buildings previously for EIFS removal at certain locations and that Plaintiffs should anticipate additional

problems if Plaintiffs moved forward with her recommendation about complete removal of the remaining EIFS. Id., page 333, line 14-page 335, line 10.

Originally-installed sliding glass doors:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed sliding glass doors and replacing those doors with modern versions, even though CCS never installed the original sliding glass doors and Plaintiffs knew about damage and water intrusion associated with leaking sliding glass doors by the mid-2000s. Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the oceanside sliding glass doors when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. In September 2008, Jernigan recommended Plaintiffs remove and replace the "leaking sliding glass doors" because of problems that had been "on-going" or that had not been funded by Plaintiffs in previous years. Deposition of Jernigan, page 332, line 15-page 333, line 13. Jernigan testified that leaking sliding glass doors have been a problem at Shipwatch since she returned to manage the property in February 2005. Id., page 219, lines 8-18; page 230, lines 9-12.

Trombino testified he knew about leaking sliding glass doors when he joined the Board in 2005 when Jernigan told him the project had problems with the sliding glass doors. Trombino, page 132, line 22-page 133, line 14. Beginning in 2006, the Board replaced a certain number of leaking sliding glass doors (approximately 10-15 per year) based mainly upon homeowner complaints. Schaewe, page 78, line 11-page 79, line 6.

In addition, HOA Board meeting minutes between 2005-2007 clearly reflect Plaintiffs' knowledge and ongoing discussions about repairing and replacing leaking sliding glass doors. In 2005, the Board noted leaks continued at some sliding glass doors, including the fifth floor penthouse doors likely caused by sunlight deteriorating the rubber seals and caulking. See Shipwatch Board of Directors Meeting, April 1, 2005, page 2; and Shipwatch Board of Director Meeting,

Rmj/f

September 16-17, 2005, page 2. In 2006, the Board discussed that leaking sliding glass doors continued to be problematic, and the leaking persisted despite repairs using caulk. See Shipwatch Board of Directors Meeting, March 18, 2006, page 10 (Exhibit 3).

In 2006 and 2007, Plaintiffs also received correspondence directly from Defendants that put Plaintiffs on notice of continued water intrusion issues at the sliding glass doors. On July 10, 2006, Robert Sisnroy, P.E., produced a report to Jernigan explaining the results of his visual survey of "chronic water intrusion" conditions at two of the Shipwatch buildings. Sisnroy stated that based on his observations, "it is evident that chronic water intrusion is occurring adjacent to the sliding glass door installations typically at the south walls." Further, Sisnroy cautioned his recommended repair of installing a sill pan with end dams would only be a temporary solution to the leaks, and a long term solution included installation of new doors on an elevated curb.

In 2007, the HOA building committee reported: "it has been well known by passed boards that there has been leakage problem[s] with . . . a number of sliding glass doors. . . . The regime has put forth concerted effort over the years to remedy this problem by caulking." See Building Report, March 9, 2007, page 2. However, leaks continued at the fourth and fifth floor sliding glass doors, and the Board undertook an investigation to determine "whether [the] leakage is from the doors themselves or from other sources." See Building Committee Report, Shipwatch Homeowners' Meeting, January 20, 2007, page 2.

The September 13, 2008 HOA Board meeting minutes stated: "Out of the 276 sliding glass doors (which has been an ongoing project for many years) we have replaced 85. The cost is very high, over \$10,000 per door as they are not stock doors and must be custom made - the cost is for taking off the old door, replacing and shim the door to fit, plus caulking."

RWD/8

Originally-installed windows:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing originally-installed windows and replacing them with enhanced windows, even though CCS never installed those windows and Plaintiffs knew about damage and water intrusion associated with leaking windows by the mid-2000s. As discussed, Arnie Schaewe (a board member and unit owner) testified that Plaintiffs knew they had leakage problems at various locations including the original bay windows when CCS began work in 2002-2003. Deposition of Arnie Schaewe, page 35, line 9-page 37, line 22. Jernigan noted leaking bay windows in 2007. Deposition of Jernigan, page 307, lines 12-21.

Deck coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior deck coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2008. For example, in September 2008, Jernigan recommended Plaintiffs remove and replace the deck coatings. Deposition of Jernigan, page 332, line 15-page 333, line 13. The September 2008 HOA Board meeting minutes stated, "[t]he Board previously passed on coating the decks because we needed to have money to do other projects . . . and let the warranty expire. If the decks are not recoated very soon, they will deteriorate to point buildings will have to be closed and decks completely redone." Id. The minutes reflected Jernigan "highly recommended" this work. Id. The minutes further reflected the Board's acknowledgment in 2008 that the balcony deck recoating, along with the recommended EIFS replacement and sliding glass door replacement, "were items that either were 'on-going' or [had] been held back from years previous." Id.

Balcony ceiling coatings:

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the balcony ceiling coatings throughout the buildings even though CCS did not install the original coatings and Plaintiffs knew about damage associated with deteriorated deck coatings by 2005. For example, Trombino testified that the breezeway ceilings had "peeling" issues since he started on the board in 2005. Deposition of Trombino, page 43, line 17-page 44, line 2. Schaewe testified that Plaintiffs only "spot repaired" the ceilings from 2002-2013 and that he did not know why Plaintiffs did not make any wholesale repair to the balcony ceiling coatings. Deposition of Schaewe, page 19, lines 2-23.

Handrails

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing the exterior handrails throughout the complex even though CCS did not install the original handrails and Plaintiffs knew about damage associated with deteriorated handrails by 2008. For example, in September 2007 and September 2008, the HOA Board meeting minutes discussed the continued need to sand and repaint the railings. The Board decided to remove the repairs to the handrails from the budget "in lieu of more important items." On September 13, 2008, the Board meeting minutes note the decision that the Board "will again delay painting of the railings."

Moreover, Trombino testified CCS is not responsible for the cost of new handrails. Deposition of Trombino, page 44, lines 8-12. Schaewe also testified CCS should not be held responsible for the cost to remove and replace the handrails. Deposition of Schaewe, page 59, line 25-page 60, line 15.

Metal Framing/DEFS

In this litigation, Plaintiffs demanded CCS pay for the costs of removing and replacing metal framing at the buildings even though CCS notified Plaintiffs about damaged metal framing and Plaintiffs elected not to make repairs. The contract

documents showed CCS and its subcontractors removed the original EIFS and replaced it with Durock/DEFS at certain locations on the buildings in two phases (from November 2002-December 2003 and September 2003-May 2004). Schaewe testified that during the removal of the original EIFS cladding in 2003-2004, Plaintiffs knew about rusted studs on the oceanside and endwalls of all four buildings, particularly behind originally-installed EIFS adjacent to originally-installed sliding glass door and windows. Deposition of Schaewe, page 37, lines 1-9.

Between 2005-2007, the board learned that water tended to get behind EIFS and then rotted the studs and caused failure. Deposition of Trombino, page 38, lines 11-17. Trombino testified the board did not elect to hire someone to inspect the buildings at that point because [the board] had already decided to remove the EIFS and replace the studs. Id. page 38, lines 18-25. Significantly, on May 9, 2007, CCS reported to Jernigan, "Leaks continue to be a problem at and around the old sliding doors on the beachfront and golf course side of the buildings. We have repeatedly shown you and numerous board members that these doors are leaking and I am sure there is damage that is occurring in the new metal stud walls with the Durock system that we installed during our project [in 2003-2004]." Carolina Concrete Systems, Inc. "Inspection Report" dated May 9, 2007, item 14.

On September 6, 2007 CCS issued a proposal for the removal and replacement of the fourth and fifth floor oceanside balcony sliding glass doors. Importantly, the proposal stated the proposed replacement did not include any repair to the metal studs that support the doors or the new installed wall studs, "for we do not know the extent of any damage ... the doors have been leaking since the new [Durock] wall system was installed ... and has allowed water to enter the wall ... and damaged the metal studs in the wall." Carolina Concrete Systems, Inc. Proposal dated September 6, 2007.

On February 5, 2009, CCS again notified Plaintiffs: "Leaks continue to be a problem at and around the old sliding glass doors on the beachfront and golf course side of the buildings. We have repeatedly shown [Jernigan] and numerous board members that these doors are leaking and I am sure there is damage that is

occurring in the new metal stud walls with the Durock system that was installed during 2003/2004. We are in the process of replacing 17 doors and I recommend the remaining old doors be removed and replaced." Carolina Concrete Systems, Inc. "Building Inspection Report" dated February 5, 2009, page 2.

Lack of kickout flashing or drip edge flashing:

On May 22, 2009, Plaintiffs' engineering experts in this litigation (Sutton-Kennerly & Associates, Inc. or "SKA") issued a "Proposal for Engineering Cost Estimate and Design" for the project "... to conduct a cost estimate of the recommended repairs from the Property Assessment and Report by Commercial Building Consultants, dated January 31, 2008 and design details for recommended kickout flashings, drip edge flashing and installation of new EFCO sliding glass doors." SKA's May 22, 2009 proposal reflected Plaintiffs' knowledge based on the January 31, 2008 "Limited Property Assessment Report" about "[o]ther moisture problems [including] lack of a drip edge flashing along the ends of the buildings, and the lack of a kick-out flashing at the transition between the sloped metal roof of the existing stair wells and the exterior facade."

B. THE EVIDENCE MIRRORED OTHER SOUTH CAROLINA CONSTRUCTION DEFECTS CASE LAW THAT UPHELD THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.

In Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996), Dean purchased a building in Charleston on September 1984 after a contractor had inspected it and found it to be structurally sound. Two months later, she noticed a fine crack in the building façade, which she thought might be related to some pile driving done by Ruscon during construction at another location nearby. She immediately hired expert consultants to examine the crack. Several months later Ms. Dean noticed that the original crack had expanded and the façade in that location was beginning to bulge and buckle. A second crack also had appeared in another location. After being informed that the building was no longer structurally

RO/12

sound, Dean brought suit against Ruscon in 1991. At trial, the court directed a verdict against Dean, finding as a matter of law that the statute of limitations expired.

On appeal, the Supreme Court affirmed, holding that the statute of limitations began to run in November 1984 when Dean initially discovered the crack. The court said, "[b]ecause Dean had notice in November 1984 that she may have a cause of action against Ruscon, there is no need to toll the statute of limitations beyond that date." (emphasis in original). Dean, 321 S.C. at 366, 468 S.E.2d at 647. Further, the court said, "Dean's subsequent failure to act with reasonable diligence in pursuing such claim is no reason to toll the statute of limitations until such time as further damage evolved." Id. Moreover, the court said, "The fact that Dean may not have comprehended in 1984 that the original crack would expand causing the building to ultimately buckle is immaterial." Id.

In a similar case, the court upheld summary judgment for the defendant based on the statute of limitations in Barr v. City of Rock Hill, 330 S.C. 640, 500 S.E.2d 157 (Ct. App. 1998). The court held a termite inspection report noting moisture in the crawl space of the Plaintiffs' house was sufficient notice of water damage to start the running of the statute of limitations.

In this case, Plaintiffs' clearly knew about possible claims for damage from water intrusion before July 12, 2009, as evidenced by the deposition testimony of Schaewe, Trombino, and Jernigan. In addition, HOA board meeting minutes clearly documented numerous discussions surrounding continued issues involving leaks at the sliding glass doors and attempted piece-meal repairs short of removal and replacement.

CONCLUSION

For these reasons, the Court grants partial summary judgment and strikes the claims associated with (a) EIFS; (b) originally-installed sliding glass doors; (c) originally-installed windows; (d) deck coatings; (e) balcony ceiling coatings; (f) handrails; (g) metal framing behind originally-installed EIFS and adjacent to originally-installed sliding glass doors and windows; and (h) lack of kickout flashing

RND 13

or drip edge flashing from Plaintiffs' claims in this litigation. See Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996). The litigation continues for the remaining issues.

Charleston, South Carolina

July 27, 2015

RMD/14

R. Markley Dennis, Jr.
Judge R. Markley Dennis, Jr.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Circuit Case No. 2012-CP-10-3858

FILED
2015 JUL 28 PM 4:32
JULIE J. ARISTRONG
CLERK OF COURT

Oscar Mendiondo, individually and as representative of a class of similarly
situated owners of condominium units in the horizontal property regime known
as Shipwatch Condominiums, ...Appellants,

v.

Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy, individually;
Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectec, Inc.; Sonneborn, Inc.;
Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete, Inc.; BASF Corp.;
Gary Freeman Architect, Inc.; Gary Freeman, individually,

Of Whom, Carolina Concrete Systems, Inc.; Sisnroy Engineering, LLC; Robert G. Sisnroy,
individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Sonneborn, Inc.;
EFCO Corp.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman,
individually, are,..... Respondents.

CERTIFICATE OF SERVICE

I, Frances Klotsch, an employee of Robertson Hollingsworth & Flynn, hereby certify that I have
served parties in this action with a copy of the document(s) via U.S. Mail and/or Electronic Mail as follows:

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901
(P) 843-524-1116
ATTORNEYS FOR GLASSTEC, INC.

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun St., Suite 400
Charleston, SC 29401
(P) 843-266-8237

**ATTORNEYS FOR SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

AND

J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
(P) 843 723-0185

ATTORNEYS FOR FIRST EXTERIORS, LLC

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
(P) 843-576-2800

ATTORNEYS FOR CAROLINA CONCRETE SYSTEMS, INC.

David A. Root, Esquire
Kernodle Root & Coleman
914 Golly Road, Suite 2
Charleston, SC 29412
(P) 843-795-7800

ATTORNEY FOR BASF AND SONNEBORN

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood
P.O. Box 893
Charleston, SC 29402
(P) 843-577-6726

**ATTORNEY FOR EFCO CORP. AND W.C. JOHNSTON
ARCHITECTURAL SALES, INC.**

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
(P) 577-7700

**ATTORNEY FOR GARY FREEMAN, ARCHITECT AND
GARY FREEMAN, INDIVIDUALLY**

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun St., Suite 220
Charleston, SC 29401
(P) 843-805-6550

and

L. Dean Best, Esquire
P.O. Box 13466
Charleston, SC 29422
(P) 843-793-4744
(F) 843-793-4278

ATTORNEYS FOR GLASGOW ROOFING

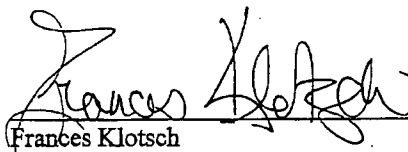
Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
(P) 843-766-8101

ATTORNEYS FOR CHARLESTON GLASS COMPANY, INC.

Greg Horton, Esquire
Ryan Gilsenan, Esquire
Adriane Belton, Esquire
Womble Carlyle
5 Exchange Street
Charleston, SC 29401
(P) 843-722-3400

ATTORNEYS FOR ACROCRETE, INC.

Terrence McKelvey
1084 Winslow Drive
Charleston, SC 29412
(P) 843-559-5074
PRO SE DEFENDANT



Frances Klotsch

July 28, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

vs.

CAROLINA CONCRETE SYSTEMS, INC.,
GLASSTEC, INC., EFCO CORP., SISNROY
ENGINEERING, LLC; ET AL

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-3857

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

R. Patrick Flynn, Esquire, Bar No. _____

Address:

Robertson Hollingsworth & Flynn

177 Meeting Street, Suite 300

Charleston, SC 29401

Phone: 843-723-6470 Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Stacey P Canaday, Bar No. 68805

Address:

Po Box 2055

Beaufort, SC 29901

Phone: 843-524-1116 Fax 843-524-1463

E-mail: staceycanaday@tgdpa.com Other: _____

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: MOTION FOR SUMMARY JUDGMENT

Estimated Time Needed: 15 MINUTES

Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant

10/28/2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Shipwatch Condominium Association,)
Inc.,)

Plaintiff,)

VS.)

Carolina Concrete Systems, Inc.; Sisnroy)
Engineering, LLC; Robert G. Sisnroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonnebom, Inc.; Chimney)
Sweeps, Inc.; Low Country Chimneys, Sales)
Inc.; Charleston Glass Company, Inc.; First)
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.)
Gary Freeman Architect, EFCO Corp.; W.C.)
Johnston Architectural Inc.; Gary Freeman,)
individually;)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-3857

DEFENDANT GLASSTEC, INC.'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT AS TO
THE PLAINTIFFS' CLAIMS AND
DEFENDANT CAROLINA CONCRETE
SYSTEMS, INC.'S CROSS-CLAIMS

FILED
2014 OCT 29 PM 4:29
JULIE J. ARMSTRONG
CLERK OF COURT

TO: R. PATRICK FLYNN, ESQ., ATTORNEY FOR PLAINTIFFS, and DAVID S.
COBB, ESQ., ATTORNEY FOR DEFENDANT CAROLINA CONCRETE SYSTEMS,
INC.:

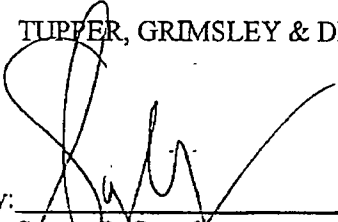
PLEASE TAKE NOTICE THAT ten (10) days after the service of this Notice upon you,
or as soon thereafter as counsel may be heard, the undersigned attorney for Defendant GlassTec,
Inc. ("GlassTec") will move before the presiding Judge for the Ninth Judicial Circuit in
Charleston County for an Order pursuant to Rule 56 of the South Carolina Rules of Civil
Procedure granting GlassTec's Motion for Summary Judgment as to both the Plaintiffs' and
Defendant Carolina Concrete Systems, Inc.'s claims against it on the grounds that the Plaintiffs
have failed to file and serve their claims against GlassTec within the applicable statute of
limitations, that the majority of GlassTec's work on the subject project, specifically including
work on bay windows, was removed and replaced by another party prior to the inception of this
lawsuit, that there is no special relationship between GlassTec and Defendant Carolina Concrete

Systems, Inc. to support its claims against GlassTec, and that there is no genuine issue as to any material fact and GlassTec is therefore entitled to judgment as a matter of law.

This motion will be further based upon the pleadings, discovery, oral arguments and any affidavits and memorandum of law that may be filed prior to a hearing on this matter.

Respectfully submitted,

TUPPER, GRIMSLEY & DEAN, P.A.

By: 

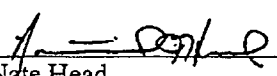
Stacey P. Canaday
Attorney for GlassTec, Inc.
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

Beaufort, South Carolina

Dated: October 28, 2014

CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the
Above and foregoing to counsel of record in said
Proceeding to his office address with sufficient
Postage affixed hereto, this 28th day of
October, 2014.


Nate Head

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Shipwatch Condominium Association,)
Inc.,)

Plaintiff,)

VS.)

Carolina Concrete Systems, Inc.; Sisroy)
Engineering, LLC; Robert G. Sisroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonnebom, Inc.; Chimney)
Sweeps, Inc.; Low Country Chimneys, Sales)
Inc.; Charleston Glass Company, Inc.; First)
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.)
Gary Freeman Architect, EFCO Corp.; W.C.)
Johnston Architectural Inc.; Gary Freeman,)
individually;)

Defendants.)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Oscar Mendiondo, Individually and as)
Representative of a class of similarly)
Situated owners of condominium units at)
The horizontal property regime known as)
Shipwatch Condominiums)
Plaintiffs,)

VS.)

Carolina Concrete Systems, Inc.; Sisroy)
Engineering, LLC; Robert G. Sisroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonnebom, Inc.; Chimney)
Sweeps, Inc.; Low Country Chimneys, Sales)
Inc.; Charleston Glass Company, Inc.; First)
Exteriors, LLC; Acrocrete, Inc.; BASF Corp.)
Gary Freeman Architect, EFCO Corp.; W.C.)
Johnston Architectural Inc.; Gary Freeman,)
individually;)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-3857

DEFENDANT GLASSTEC, INC.'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-3858

FACTS

The Shipwatch project consists of four oceanfront buildings constructed around 1984-85 with EIFS exterior cladding. GlassTec was not involved in the original construction of these buildings. In August of 2001, GlassTec provided two proposals to Bob Clink, then-manager of the Shipwatch Condominium Association (hereinafter referred to as "Shipwatch"), for various window repair work upon the property (copies of two proposals dated August 30, 2001 attached collectively as Exhibit 1). On November 5, 2001, GlassTec provided another proposal for additional work upon the property, to include glass replacement in both windows and sliding glass doors (copy of proposal dated November 5, 2001 attached as Exhibit 2). Throughout 2002, GlassTec purchased and installed a limited number of Starline brand windows for a limited number of units for complete removal and replacement, and also purchased glass for replacement of fogged panels (copy of GlassTec's job cost ledger attached as Exhibit 3). Based upon this ledger, it appears GlassTec performed work in only the following units: A106, 301, 306, B107, 108, 207, 212, 307, 312, 410, 411, C114, 118, 213, 218, 313, D124, 219, 224, 319, 353, 324, 429. Further, minimal work was performed by GlassTec from January through March of 2003, appearing to comprise only removal and replacement of one bay window unit in Unit D319. Materials were ordered for Units A206, B112, and D219 but no labor was associated with those units. By January of 2004, GlassTec was no longer performing any work on the project (copy of letter dated January 25, 2004 from Ron Weaver of GlassTec to Lester Griffin of Shipwatch attached as Exhibit 4).

In 2002, Carolina Concrete Systems (hereinafter referred to as "CCS") acted as the general contractor for various projects at Shipwatch, which included window and door repair in 2003 and 2004 (copy of Application and Certification for Payment dated April 25, 2004 attached as Exhibit 5). On or about October 22, 2003, Defendant Charleston Glass Co., Inc. performed an

inspection of the windows (copy of Charleston Glass invoice dated October 22, 2003 attached as Exhibit 6). Robert Sisnroy inspected the Shipwatch property on December 20, 2003. Mr. Sisnroy produced a memorandum to Lester Griffin of Shipwatch dated January 7, 2004, wherein he states—among other things—that at least some bay windows were apparently inadequately flashed (copy of January 7, 2004 memorandum attached as Exhibit 7). It is unclear, however, which buildings and/or units were inspected. Charleston Glass provided a proposal for work on bay windows on January 7, 2004 (copy of Charleston Glass proposal dated January 7, 2004 attached as Exhibit 8). According to Charleston Glass documents, at least twelve bay windows were to be replaced, with the remaining to be removed, reflashed and reinstalled (copy of March 30, 2004 correspondence from Charleston Glass to CCS attached as Exhibit 9). Charleston Glass sent invoices for bay window work to CCS on March 26, 2004 and October 14, 2004 (copies attached collectively as Exhibit 10). It is apparent that GlassTec was not contacted to inspect the property or provide any repairs as a result of the Sisnroy inspection.

In addition to bay window work, CCS performed other work on various fixed windows and sliding glass doors, which necessarily included work performed by GlassTec in 2002. At no time did GlassTec perform work on behalf of CCS, nor was GlassTec paid by CCS for work it performed in 2002-03.

Plaintiffs filed these lawsuits on June 13, 2012 alleging defective and deficient construction at the Shipwatch Condominiums located within the Wild Dunes development of Isle of Palms, South Carolina. Plaintiffs served GlassTec on or about July 13, 2012.

ARGUMENT

In addition to the arguments asserted herein, GlassTec incorporates by reference those arguments set forth by CCS in its Motion for Summary Judgment, Memorandum in Support, and argument by counsel to the extent all are applicable to the position of GlassTec. GlassTec asserts

that it is entitled to summary judgment as to the Plaintiffs' claims against it on the grounds that the Plaintiffs have failed to file their suit within the applicable statute of limitations. Further, the majority—if not all—of GlassTec's work was removed from the property prior to the suits being filed. With regard to CCS's cross-claims, CCS does not enjoy a special relationship with GlassTec such that CCS is permitted to assert claims against GlassTec. As a result, GlassTec is entitled to summary judgment.

I. The Plaintiffs' Claims

The statute of limitations starts to run when the "cause of action shall have accrued." S.C. Code Ann. § 15-3-20. In order to determine when the cause of action accrues, South Carolina has adopted the "discovery rule" which provides that "the statute begins to run from the date the injury resulting from the wrongful conduct is either discovered or may be discovered by the exercise of reasonable diligence." Dillon School District Number Two v. Lewis Sheet Metal Works, 286 S.C. 207, 215, 332 S.E.2d 555, 559 (Ct. App. 1985). An owner can be put on notice that some claim might exist when the owner observes a construction defect and retains a consultant. See Dean v. Ruscon Corp., 321 S.C. 360, 468 S.E.2d 645 (1996) (Court held that the statute of limitations began to run when the owner observed a building crack and retained a consultant). "The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed." Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 303, 278 S.E.2d 333, 334 (1981). The "[f]ailure of the injured party to comprehend the full extent of damages ... is immaterial." Wiggins v. Edwards, 314 S.C. 126, 442 S.E.2d 169, 170 (1994).

S.C. Code Ann. § 15-3-530 applies a three-year statute of limitations to Plaintiffs' claims of negligence, breach of contract, common-law warranty, and strict liability in tort. As indicated above, GlassTec completed its work on the subject property by March of 2003. By January of

2004, Shipwatch had received a report from Robert Sisnroy regarding alleged flashing deficiencies within at least some bay windows. In October of 2004, it appears most if not all bay windows were removed and replaced or removed and reflashed. Additionally, CCS performed other window work on the property from 2004 through at least 2008, to include sliding glass door repairs. To the extent GlassTec performed any sliding glass door work, its work was likely removed and replaced no later than 2008.

Since the Plaintiffs were placed on notice as early as January 7, 2004 of alleged deficiencies in bay window flashing, they arguably had until January 4, 2007 to file suit against GlassTec for any alleged deficiency. However, Plaintiffs did not file and serve their complaint against GlassTec until July 12, 2013, over five years past the applicable statute of limitations. At the outside, Plaintiffs would have had until 2011 to file claims against GlassTec (based upon 2008 work performed on various windows and doors by CCS), but the July 12, 2013 filing and service date is still well beyond the limitations. In addition, by the time the Plaintiffs filed and served GlassTec with the summons and complaint, all of GlassTec's work had been removed and replaced by some other entity, without notice to GlassTec, thereby preventing GlassTec the opportunity to inspect any alleged deficiencies in its work. For these reasons, GlassTec is entitled to summary judgment as to all of the Plaintiffs' claims against it.

II. CCS's Claims

CCS has asserted claims for negligence, breach of contract, breach of warranty and indemnity. As indicated above, GlassTec had no contract, oral or otherwise, with CCS. Further, all of CCS's claims sound in indemnity; specifically, for each cause of action CCS claims it is entitled to "...actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as fees and costs incurred in the investigation, defense and settlement

of this claim.” (See CCS’s Answer and Cross-Claims). “Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss of damage the second party incurs to a third party.” *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct.App. 1990), aff’d 307 S.C. 128, 414 S.E.2d 118 (1992). “The character of an action is not to be determined by the terminology which the pleadings may chance to give it. On the contrary, the character of an action is fixed by the events which the pleader has cited...” *Walsh v. Evans*, 112 S.C. 131,136, 99 S.E.2d 546 (1919).

Clearly, in seeking the damages enumerated above, CCS is pleading a claim for indemnity rather than for negligence, breach of warranty or breach of contract. Because GlassTec had no contract with CCS and at no time ever performed any work on behalf of CCS, the only kind of indemnity that could be sought would be for equitable indemnification. Such a claim can only be brought where some special relationship between the parties exists such that there is an obligation on one party to indemnify the other. *Stuck v. Pioneer Logging Machinery, Inc.*, 301 S.E.2d 552, 53 (S.C. 1983). As indicated, no contract or any special relationship existed between GlassTec and CCS such that CCS is now able to maintain a cause of action for equitable indemnification against GlassTec. GlassTec, therefore, is entitled to summary judgment as to CCS’s claims against it for negligence, breach of warranties, breach of contract and indemnity.

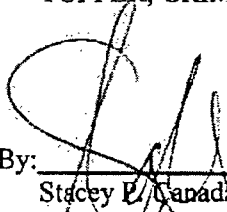
CONCLUSION

Based upon the above and forgoing, GlassTec believes it is entitled to an order of summary judgment as to both the Plaintiffs’ and CCS’s claims against it, as there is no question of material fact and GlassTec is entitled to an order as a matter of law.

(Signature page to follow)

Respectfully submitted,

TUPPER, GRIMSLEY & DEAN, P.A.

By: 

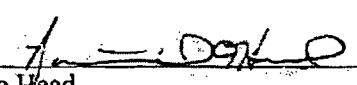
Stacey E. Canaday
Attorney for GlassTec, Inc.
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

Beaufort, South Carolina

Dated: January 14, 2015

CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the
Above and foregoing to counsel of record in said
Proceeding to his office address with sufficient
Postage affixed hereto, this 14th day of
January, 2014.


Nate Head

August 30, 2001

Bob Clink
Shipwatch HOA
Isle of Palms, SC

Re: Shipwatch
Renovations

Dear sir:

Thank you for allowing Glasstec to bid on the renovations at Shipwatch. This bid is based on information gathered by Glasstec during an on site inspection of the unit windows accessible by the lift on that day. All new windows will be Starline products, which are manufactured with a 2½" frame depth as opposed to the existing 4½" storefront frames. This will result in a need for interior sheetrock repairs to be completed by others.

All new windows will meet following specifications:

- Series 100
- 2 ½" frame thickness
- HC 65
- 15 psf sill
- Standard bronze paint
- Head receptors
- Installation of bituthene
- .050 bronze sill flashing provided and bent by Glasstec
- Fixed glass units - 1" bronze tempered insulated glass
- Sliding glass units - ¾" bronze tempered insulated glass
- Screens included
- Interior and exterior caulk

Operable Bay Windows

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" operable unit OXO slider with screen

For the sum of: \$3,001.10 per unit

Fixed Bay Windows

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" fixed/fixed unit

For the sum of: \$2,840.87 per unit

0000003
Glasstec



Maintenance to Existing Bay Windows

- ✓ Remove existing windows
- ✓ Clean caulk from existing storefront metal as much as possible
- ✓ Install bituthene
- ✓ Replace existing flashing with .050 bronze aluminum flashing
- ✓ Reinstall window frames
- ✓ Install new 1" bronze tempered insulated glass units
- ✓ Install new glazing gasket

For the sum of: \$1,915.42 per unit

Fogged Insulated Glass Replacement

- ✓ (2) 48" x 57" x 1" bronze tempered insulated glass units
- ✓ (2) 23" x 57" x 1" bronze tempered insulated glass units
- ✓ Related caulking
- ✓ New glazing gasket

For the sum of: \$1,419.41

These prices do not include the following:

- Lift Rental
- Moving furniture
- Protection of carpet
- Removing/reinstalling window dressings
- Interior sheetrock repair
- Replacement of metal studs
- Wood blocking
- Replacement of exterior or interior corner beads
- Stucco/EIFS repair
- Wood trim
- Shop drawings or engineer's stamp
- Protection of windows and doors after installation
- Cleaning/dusting of unit after installation

If you should have any questions regarding any of the information above, please call. Once again, thank you for allowing Glasstec to bid on Shipwatch.

Respectfully,

Ron Weaver
Glasstec, Inc.

0000004
Glasstec

August 30, 2001

Bob Clink
Shipwatch HOA
Isle of Palms, SC

Re: Shipwatch
Units 301 & 429

Dear sir:

Thank you for allowing Glasstec to bid on your glass replacement needs. This bid covers all labor, material, travel time, and service call necessary to complete the following work at Shipwatch;

Bldg A Unit 301 - Fogged Insulated Glass Units

Cut out existing sealant from perimeters of glass units
Install (2) 23" x 57" x 1" bronze tempered insulated glass units
Install new glazing gasket
Wet seal perimeters of glass with urethane caulk in appropriate color

For the sum of: \$ 799.60

Unit 429 - Fogged Sliding Glass Door Insulated Glass Units

Remove existing door panels
Inspect door frame for compromised areas
Caulk any compromised areas
Install new 46 3/4" x 88" x 5/8" bronze tempered insulated glass units in existing door frames
Reinstall door panels

For the sum of:	(1) panel	\$ 796.72
	(4) panels	\$1,806.45
	(6) panels	\$2,507.87

If you should have any questions, please call. Allow a 5-7 day lead time for completion of work.

If any of the above projects are accepted, please clearly indicate your choice, sign below, and return to Glasstec at 843-293-8675.

Signature: _____ Date: _____

Respectfully,

Ron Weaver
Glasstec, Inc.

0000005
Glasstec

November 5, 2001

Bob Clink
Shipwatch HOA
Isle of Palms, SC

Re: Shipwatch
Window and glass replacement

Dear sir:

Per our conversation regarding window and glass replacement at Shipwatch, I am confirming the following information. Please note that I have corrected a mistake I made regarding unit 429.

Unit D224

Operable Bay Windows

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" operable unit OXO slider with screen

For the sum of: \$3,001.10 per unit

Unit D124

Fixed Bay Windows

- ✓ (2) 24" x 59" fixed units
- ✓ (1) 105" x 59" fixed/fixed unit

For the sum of: \$2,840.87 per unit

Unit A301

Fogged Insulated Glass Units

Cut out existing sealant from perimeters of glass units

0000006
GlassTec



Install (2) 23" x 57" x 1" bronze tempered insulated glass units
Install new glazing gasket
Wet seal perimeters of glass with urethane caulk in appropriate color

For the sum of: \$ 799.60

Unit D429

Fogged Sliding Glass Door Insulated Glass Units

Remove existing door panels
Inspect door frame for compromised areas
Caulk any compromised areas
Install new 46 3/4" x 88" x 5/8" bronze tempered insulated glass units in existing door frames
Reinstall door panels

For the sum of: (6) panels \$2,507.87

Unit B410

Fogged Sliding Glass Door Insulated Glass Units

Remove existing door panels
Inspect door frame for compromised areas
Caulk any compromised areas
Install new 46 3/4" x 88" x 5/8" bronze tempered insulated glass units in existing door frames
Reinstall door panels

For the sum of: (1) panel \$ 796.72

Unit B312

Fogged Insulated Glass Replacement

- ✓ (2) 48" x 57" x 1" bronze tempered insulated glass units
- ✓ (2) 23" x 57" x 1" bronze tempered insulated glass units
- ✓ Related caulking
- ✓ New glazing gasket

For the sum of: \$1,419.41

Unit B212

Fogged Insulated Glass Replacement

- ✓ (2) 48" x 57" x 1" bronze tempered insulated glass units
- ✓ (2) 23" x 57" x 1" bronze tempered insulated glass units
- ✓ Related caulking
- ✓ New glazing gasket

For the sum of: \$1,419.41

Unit B207

Maintenance to Existing Bay Windows

- ✓ Remove existing windows
- ✓ Clean caulk from existing storefront metal as much as possible
- ✓ Install bituthene
- ✓ Replace existing flashing with .050 bronze aluminum flashing
- ✓ Reinstall window frames
- ✓ Install new 1" bronze tempered insulated glass units
- ✓ Install new glazing gasket

For the sum of: \$1,915.42 per unit

Glasstec will complete all of the above for the total sum of: **\$14,700.40**

If you should have any questions, please call. We will contact you to schedule installation as soon as all of the above material is shipped.

Thank you,

Ron Weaver
Glasstec, Inc.

0000008
GlassTec

GLASSTEC, INC.
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) IDs from Shipwatch IOP to Shipwatch IOP. Report order is by ID. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Description	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR
Shipwatch IOP	305	Income - Glazing	3/7/03	Shipwatch HOA - Completion of bay window in unit 319 and materials only for units D119, B112 and A206 bay windows	SJ	5912		7,863.48	
	405	Job Materials No Ta	12/7/01	Coastal Glass - 1" bronze tempered IG 21-7/16x53-9/16	PJ	217365	214.16		
			12/7/01	Coastal Glass - 1" bronze tempered IG 47-1/2x53-9/16	PJ	217365	116.82		
			12/7/01	Coastal Glass - 1" bronze tempered IG 47-1/4x53/9/16	PJ	217365	116.82		
			12/12/01	Coastal Glass - 31-5/16" x 53-9/16 x 3/4" clear annealed IG	PJ	218552	155.76		
			10/22/02	Starline Industries - 98 1/8" x 59 3/4" Fixed/Fixed	PJ	2787	279.00		
			10/22/02	Starline Industries - 90 degree Corners 59 3/4"	PJ	2787	86.00		
			10/22/02	Starline Industries - 1 x 2 Snap Trim - 28"	PJ	2787	21.00		
			10/22/02	Starline Industries - 1 x 2 Snap Trim - 102"	PJ	2787	31.50		
			10/22/02	Starline Industries - 1 x 2 Snap Trim - 60"	PJ	2787	44.40		
	406	Direct Labor	2/14/03	William Blackwell	PRJ	26782	210.00		
			2/14/03	Jerry Chappell	PRJ	26784	280.00		
			1/16/04	Jerry Chappell	PRJ	28560	104.00		
			1/16/04	William C. Whitecotton	PRJ	28569	52.00		
	576	Gas/Oil	2/7/03	Jerry Chappell - Gas for trip to Isle of Palms to do unit at Shipwatch	CDJ	26746	20.00		
			3/14/03	Jerry Chappell - Gas Ticket	CDJ	27071	20.00		
	610	Miscellaneous Expc	2/7/03	Jerry Chappell - Parking Permit for Wild Dunes to do job at Shipwatch	CDJ	26746	20.00		
	665	Travel/Lodging	2/14/03	Ray Blackwell - Food Allowance for 1.5 days	CDJ	26810	21.00		
			2/14/03	Ray Blackwell - 3 hours ride time	CDJ	26810	15.45		
			2/14/03	Jerry Chappell - Food Allowance for 1.5 days	CDJ	26811	21.00		
			2/14/03	Jerry Chappell - 3 hours drive time	CDJ	26811	48.00		
			2/21/03	William Blackwell - Travel Time for Isle of Palms	CDJ	26882	2.55		
			3/10/03	MBNA - Lodging	PJ	03.31.03	45.45		
							1,924.91	7,863.48	-5,938.57
							1,924.91	7,863.48	-5,938.57
							1,924.91	7,863.48	-5,938.57

Shipwatch IOP
Report

GLASSTEC, INC.
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) IDs from Shipwatch to Shipwatch. Report order is by ID. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Description	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR
Shipwatch	305	Income - Glazing	3/27/02	Walk- in - pay app # 2 for units B318, B411, B108 & B207 acc attached forms	SJ	5227		9,547.31	
			3/27/02	Walk- in - minus 2 day lift rental	SJ	5227	716.56		
			4/24/02	Walk- in - removed 8' x 8' mirror	SJ	5295		80.00	
			6/11/02	Shipwatch HOA - completion of change order #4	SJ	5386		9,467.31	
			9/24/02	Shipwatch HOA - fixed bay window in C218	SJ	5628		2,840.87	
			9/24/02	Shipwatch HOA - replace IG units in D324	SJ	5628		1,419.41	
			9/24/02	Shipwatch HOA - replace fixed bay window in C118	SJ	5628		2,840.87	
			9/24/02	Shipwatch HOA - replace sliding glass door in C114	SJ	5628		3,785.57	
	405	Job Materials No Ta	12/6/01	Starline Industries - 98 7/8" x 59 1/2" x oxa (ox type))	PJ	2428	370.00		
			12/6/01	Starline Industries - 23 1/2" x 59 1/2" fixed	PJ	2428	288.00		
			12/6/01	Starline Industries - 90 degree mulls 59 1/2"	PJ	2428	80.00		
			12/6/01	Starline Industries - 98 7/8" x 59 1/2" -oo	PJ	2428	273.00		
			12/6/01	Starline Industries - 23 1/2" x 59 1/2" fixed	PJ	2428	288.00		
			12/6/01	Starline Industries - 90 degree mulls 59 1/2"	PJ	2428	80.00		
			12/6/01	Starline Industries - sales tax	PJ	2428	68.95		
			12/7/01	Coastal Glass - 3/4" bronze tempered IG 31-5/16x53-9/16	PJ	217364	77.88		
			1/21/02	Starline Industries - 2462	CDJ	24115	42.53		
			1/24/02	Guaranteed Supply Company - caulk sp1 spec btz	PJ	0074310	79.50		
			1/24/02	Guaranteed Supply Company - airsheld flashing 12" x 67"	PJ	0074310	104.85		
			1/24/02	Guaranteed Supply Company - gun 15" bulk sausage cart man cox	PJ	0074310	41.55		
			1/24/02	Guaranteed Supply Company - yellow cone nozzle cox	PJ	0074310	2.40		
			1/24/02	Guaranteed Supply Company - caulk dow 795 black 20 oz	PJ	0074310	268.80		
			2/11/02	Coastal Glass - Unit B-207 22 3/8" x 56 3/4" x 1" bronze tempered IG	PJ	223589	62.74		
			2/11/02	Coastal Glass - Unit B-207 22 3/8" x 56 1/2" x 1" bronze tempered IG	PJ	223589	62.74		
			2/11/02	Coastal Glass - Unit B-212 48" x 56 1/2" x 1" bronze tempered IG	PJ	223587	125.47		
			2/11/02	Coastal Glass - Unit B-212 47 7/8" x 56 5/8" x 1" bronze tempered IG	PJ	223587	125.47		
			2/11/02	Coastal Glass - Unit B-207 47 7/8" x	PJ	223587	125.47		

GLASSTEC, INC.
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) JDs from Shipwatch to Shipwatch. Report order is by JD. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Description	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR
			2/11/02	56 5/8" x 1" bronze tempered IG Coastal Glass - Unit B-207 47 7/8" x 56 1/2" x 1" bronze tempered IG	PJ	223587	125.47		
			2/11/02	Coastal Glass - Unit B-312 47 7/8" x 56 1/2" x 1" bronze tempered IG	PJ	223585	125.47		
			2/11/02	Coastal Glass - Unit B-312 48" x 56 5/8" x 1" Bronze tempered IG	PJ	223585	125.47		
			2/11/02	Coastal Glass - Unit B-212 22 5/8" x 56 1/2" x 1" bronze tempered IG	PJ	223585	62.74		
			2/11/02	Coastal Glass - Unit B-212 22 1/4" x 56 1/2" x 1" bronze tempered IG	PJ	223585	62.74		
			2/11/02	Coastal Glass - Unit D-429 46 3/4" x 88" x 5/8" bronze tempered IG	PJ	223582	1,168.20		
			2/11/02	Coastal Glass - Unit B-410 46 3/4" x 88" x 5/8" bronze tempered IG	PJ	223582	190.37		
			2/11/02	Coastal Glass - Unit B-312 22 1/4" x 56 5/8" x 1" bronze tempered IG	PJ	223582	125.48		
			2/11/02	Coastal Glass - Unit A-301 22 3/8" x 56 5/8" x 1" bronze tempered IG	PJ	223581	62.74		
			2/11/02	Coastal Glass - Unit A-301 22 3/4" x 56 3/8" x 1" bronze tempered IG	PJ	223581	62.74		
			2/11/02	Coastal Glass - Delivery	PJ	223980	10.00		
			2/11/02	Coastal Glass - 46 3/4" x 88" x 5/8"	PJ	229577	1,142.22		
			2/11/02	Coastal Glass - 46 3/4" x 88" x 5/8"	PJ	Credit		1,168.20	
			3/6/02	Starline Industries - 95-1/2" x 92-1/2" XO per quote Shipwatch B-411	PJ	2517	903.00		
			3/6/02	Starline Industries - screen	PJ	2517	78.00		
			3/6/02	Starline Industries - Freight	PJ	2517	49.05		
			3/11/02	Starline Industries - 97" x 59" x OO	PJ	2525	273.00		
			3/11/02	Starline Industries - 25" x 59" x O	PJ	2525	288.00		
			3/11/02	Starline Industries - 29" -90 Degree Mulls	PJ	2525	80.00		
			3/11/02	Starline Industries - 102" Box of trim 1 x 1 1/2	PJ	2525	25.50		
			3/11/02	Starline Industries - 30" box trim 1 x 1/2	PJ	2525	15.00		
			3/11/02	Starline Industries - 60" box trim 1 x 1/2	PJ	2525	38.40		
			3/18/02	Starline Industries - 98 1/4" x 60 1/2" OO Fixed	PJ	2527	273.00		
			3/18/02	Starline Industries - 24" x 60 1/2" Fixed	PJ	2527	288.00		
			3/18/02	Starline Industries - 90 degree mulls 60 1/2"	PJ	2527	80.00		
			3/18/02	Starline Industries - Box trim for sills and heads	PJ	2527	25.50		
			3/18/02	Starline Industries - Series 100 HC 65 15 psf sill, painted bronze and preped for 1" glass	PJ	2527	15.00		

GLASSTEC, INC.
Job Ledger Report
For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria Includes: 1) IDs from Shipwatch to Shipwatch. Report order is by ID. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Description	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR
			3/18/02	Starline Industries - sales tax	PJ	2527	34.08		
			3/28/02	Jerry Chappell - Reimbursement of	CDJ	24502	45.99		
			4/8/02	Coastal Glass - Gate Fee	PJ	249405	10.00		
			4/8/02	Coastal Glass - 44-3/4" x 86-7/16"	PJ	248121	364.88		
				1" bronze tempered IG - B411					
			4/8/02	Coastal Glass - 47 x 54-9/16 1"	PJ	248121	242.30		
				bronze tempered IG - C-318					
			4/8/02	Coastal Glass - 21-15/16" x 54-9/16	PJ	248121	111.06		
				1" bronze tempered IG - C318					
			4/8/02	Coastal Glass - 46-3/8" x 53-1/16"	PJ	248131	233.64		
				1" bronze tempered IG - B207					
			4/8/02	Coastal Glass - 22-15/16 x 53-1/16"	PJ	248131	116.82		
				1" bronze tempered IG - B207					
			5/6/02	Coastal Glass - 3/8" chr plate 8" x	PJ	264202	100.32		
				69-1/2" with (1) 69-1/2" edge					
				polished					
			5/28/02	Starline Industries - 23 1/4" x 59	PJ	2611	288.00		
				3/4" x fixed					
			5/28/02	Starline Industries - 96" x 59 3/4" x	PJ	2611	273.00		
			5/28/02	Starline Industries - 90 degree mulls	PJ	2611	80.00		
			5/28/02	Starline Industries - 102" x 1 x 2 box	PJ	2611	25.50		
				trim					
			5/28/02	Starline Industries - 30" x 1-2 box	PJ	2611	15.00		
				trim					
			5/28/02	Starline Industries - 60" x 1 x 2 box	PJ	2611	38.40		
				trim					
			5/28/02	Starline Industries - tax	PJ	2611	36.00		
			5/28/02	Starline Industries - 23 1/2" x 59	PJ	2610	288.00		
				3/4" x fixed					
			5/28/02	Starline Industries - 96" x 59 3/4"	PJ	2610	273.00		
				fixed					
			5/28/02	Starline Industries - 90 deg mulls	PJ	2610	80.00		
			5/28/02	Starline Industries - 102" x 1 x 2 box	PJ	2610	25.50		
				trim					
			5/28/02	Starline Industries - 30" x 1x 2 box	PJ	2610	15.00		
				trim					
			5/28/02	Starline Industries - 60" x 1 x 2 box	PJ	2610	38.40		
				trim					
			5/28/02	Starline Industries - sales tax	PJ	2610	36.00		
			5/31/02	Coastal Glass - 21-7/16 x 53-13/16 x	PJ	273370	107.08		
				1" bronze tempered IGs					
			5/31/02	Coastal Glass - 45-7/8 x 53-13/16 x	PJ	273370	447.80		
				1" bronze tempered IGs					
			5/31/02	Starline Industries - series 200 hc65	PJ	2601	999.60		
				painted bronze with screen 15 psf sill					
				S/S hardware					
			6/6/02	Guaranteed Supply Company -	PJ	0080433	3.50		
				wd40 net wt 12 oz					
			6/6/02	Guaranteed Supply Company - tape	PJ	0080433	6.15		
				long masking 2" x 60 yds					

GLASSTEC, INC.
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) IDs from Shipwatch to Shipwatch. Report order is by ID. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Description	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR
			6/6/02	Guaranteed Supply Company - caulksp spot 1	PJ	0080433	74.20		
			6/6/02	Guaranteed Supply Company - yellow cone nozzle cox	PJ	0080433	1.20		
			6/6/02	Guaranteed Supply Company - caulk Dow 795 Black 10.3 oz	PJ	0080433	61.20		
			6/25/02	Lowes Business Account - plastic 12501.5m cauli	PJ	22228	7.86		
			6/25/02	Lowes Business Account - 33gl shop sak 12ct 3mil p	PJ	22228	5.97		
			6/25/02	Lowes Business Account - steel 1/8 x 1/4 rivets ar	PJ	22228	4.97		
			6/25/02	Lowes Business Account - 1.88 x 60yd prof duck tape	PJ	22228	4.87		
			6/25/02	Lowes Business Account - steel 1/8 x 1/8 rivets ar	PJ	22228	3.87		
			6/25/02	Lowes Business Account - Tax	PJ	22228	1.65		
			7/9/02	Coastal Glass - (2) 21 X 53 X 1" BRZ IG	PJ	275451	107.08		
			7/9/02	Coastal Glass - gate charge - IOP	PJ	275962	10.00		
			8/16/02	Coastal Glass - no PO - Shipwatch glass	PJ	300499	364.50		
			8/20/02	Guaranteed Supply Company - caulk for shipwatch	PJ	0083759	367.05		
			8/20/02	Coastal Glass - 48-3/8 x 56-5/8 x 1" brz temp IG	PJ	301017	135.94		
			8/20/02	Coastal Glass - 22-1/2 x 56-3/8 x 1" brz temp IG	PJ	301017	65.25		
			8/26/02	Starline Industries - shipwatch C118	PJ	2713	755.90		
			8/29/02	Coastal Glass - 48-3/8 x 56-5/8 x 1" brz tempered IG	PJ	302208	135.94		
			8/29/02	Coastal Glass - 22-1/2 x 56-3/8 x 1" brz tempered IG	PJ	302208	65.25		
			9/6/02	Starline Industries - C114 door	PJ	2721	994.35		
			9/23/02	Starline Industries - shipwatch D112	CDJ	25478	755.90		
			9/23/02	Starline Industries - shipwatch A206	CDJ	25478	755.90		
			10/3/02	Coastal Glass - 22-3/16" X 53-13/16" X 1" BRZ TEMP IG	PJ	317488	121.50		
			10/3/02	Dual Coastal Glass - 47" X 53-1/2" X 1" BRZ TEMP IG Dual	PJ	317488	121.50		
			10/3/02	Coastal Glass - 47-3/8" X 53-1/2" BRZ TEMP IG 1" Dual	PJ	317488	121.50		
			10/3/02	Coastal Glass - 22-1/16" X 53-13/16" X 1" BRZ TEMP IG	PJ	317434	121.50		
			10/3/02	Coastal Glass - 47-1/8" X 53-1/2" X 1" BRZ TEMP Dual IG	PJ	317434	121.50		
			10/3/02	Coastal Glass - 47-1/2" X 53-1/2" X 1" BRZ TEMP Dual IG	PJ	317434	121.50		
			10/7/02	Coastal Glass - 32-3/4 x 89-7/16 x ...	PJ	308057	289.38		

GLASSTEC, INC.

Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) IDs from Shipwatch to Shipwatch. Report order is by ID. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Descriptio	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR
			10/7/02	1" bronze tempered IG					
				Coastal Glass - 22-3/16 x 53-13/16 x	PJ	308057	124.00		
			10/7/02	1" bronze temp IG					
				Coastal Glass - 47 x 53-1/2 x 1"	PJ	308057	124.00		
			10/7/02	bronze temp IG					
				Coastal Glass - 47-3/8 x 53-1/2 x 1"	PJ	308057	124.00		
			10/22/02	bronze temp IG					
				Starline Industries - 24 1/4" x 59	PJ	2787	294.00		
			11/26/02	3/4" Fixed					
				Starline Industries - 97 7/8" x 59	PJ	2836	286.65		
			11/26/02	3/4" - OO					
				Starline Industries - 24 3/8" x 59	PJ	2836	302.40		
			11/26/02	3/4" - O					
				Starline Industries - 1 x 2 Box trim	PJ	2836	48.83		
			11/26/02	62"					
				Starline Industries - 59 3/4" - 90	PJ	2836	84.00		
			11/26/02	degree mulls					
				Starline Industries - 1 x 2 Box trim	PJ	2836	26.25		
			11/26/02	100"					
				Starline Industries - 1 x 2 Box trim	PJ	2836	15.75		
			2/4/03	28"					
				Coastal Glass - 22-3/16 x 53-3/4 x	PJ	355801	125.28		
			2/4/03	1" brz temp IG					
				Coastal Glass - 47-5/16 x 53-3/4 x	PJ	355801	250.56		
				1" brz temp IG					
406		Direct Labor	5/18/01	Stephen V. Boyd	PRJ	022725	58.50		
			5/18/01	Stephen V. Boyd	PRJ	022725	87.75		
			1/25/02	Jerry Chappell	PRJ	24132	520.00		
			1/25/02	Jerry Chappell	PRJ	24132	204.75		
			1/25/02	Troy Weaver	PRJ	24133	700.40		
			1/25/02	Troy Weaver	PRJ	24133	275.84		
			2/1/02	Jerry Chappell	PRJ	24171	266.50		
			2/1/02	Troy Weaver	PRJ	24182	700.40		
			2/1/02	Troy Weaver	PRJ	24182	183.89		
			3/29/02	Jerry Chappell	PRJ	24488	520.00		
			3/29/02	Jerry Chappell	PRJ	24488	331.50		
			3/29/02	Eric Holshouser	PRJ	24492	198.00		
			3/29/02	Candido Ortiz-Robles	PRJ	24495	171.00		
			4/5/02	Jerry Chappell	PRJ	24529	143.00		
			4/19/02	Jerry Chappell	PRJ	24598	60.75		
			4/19/02	Jerry Chappell	PRJ	24598	70.88		
542		Shop Supplies - No	1/23/03	Guaranteed Supply Company -	PJ	0090040	126.00		
				Caulk Dow 795 Black 10.3 oz					
			1/23/03	Guaranteed Supply Company -	PJ	0090040	82.50		
				Caulk NP1 Limestone 10.6 oz					
			1/23/03	Guaranteed Supply Company -	PJ	0090040	100.00		
				Caulk NP1 Spec Bronze 20 oz					
			1/23/03	Guaranteed Supply Company -	PJ	0090040	10.00		
				Caution Tape Yellow 3" x 1000'					
			1/23/03	Guaranteed Supply Company - Tape	PJ	0090040	4.50		

GLASSTEC, INC.
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) IDs from Shipwatch to Shipwatch. Report order is by ID. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Description	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR
	576	Gas/Oil	6/13/02	Duct 2" x 60 yds					
				Jerry Chappell - gas	CDJ	24917	25.57		
			9/20/02	Jerry Chappell - 9.11 gas	CDJ	25457	18.91		
			9/20/02	Jerry Chappell - 9.12 gas	CDJ	25457	5.00		
	661	Insurance - AUTO	3/28/02	Candido Ortiz-Robles - Sensescape	CDJ	24504	26.00		
				Drive time					
			6/13/02	Troy Weaver - cost of living 3 days	CDJ	24916	30.00		
	665	Travel/Lodging	1/24/02	Jerry Chappell - Food	CDJ	24134	42.00		
			1/24/02	Troy Weaver - Food	CDJ	24135	42.00		
			3/28/02	Jerry Chappell - Drive time	CDJ	24502	52.00		
			3/28/02	Jerry Chappell - Food	CDJ	24502	70.00		
			3/28/02	Eric Holzhouser - Ride time to IOP	CDJ	24505	18.00		
			3/28/02	Troy Weaver - Ride time	CDJ	24507	35.04		
			3/28/02	Troy Weaver - Food	CDJ	24507	70.00		
			3/28/02	Troy Weaver - Reimbursement of cash tickets	CDJ	24507	125.24		
			4/4/02	Jerry Chappell - Drive time	CDJ	24541	52.00		
			4/4/02	Jerry Chappell - Gas ticket	CDJ	24541	10.00		
			4/5/02	Troy Weaver - Drive time IOP4 hrs	CDJ	24546	70.04		
			4/5/02	Troy Weaver - Food	CDJ	24546	14.00		
			6/13/02	Troy Weaver - 4 hours ride time to Shipwatch, IOP	CDJ	24916	36.08		
			6/13/02	Troy Weaver - food 3 days	CDJ	24916	42.00		
			6/13/02	Jerry Chappell - parking permits	CDJ	24917	20.00		
			6/13/02	Jerry Chappell - drive time 4 hours to Shipwatch, IOP	CDJ	24917	64.00		
			6/13/02	Jerry Chappell - food 3 days	CDJ	24917	42.00		
			6/13/02	Jerry Chappell - cost of living expenses	CDJ	24917	30.00		
			6/14/02	Charlie Morris - 4 hrs drive time to Shipwatch, IOP at regular time rate	CDJ	24911	36.00		
			6/14/02	Timothy Rausch - ride time to HH	CDJ	24913	41.20		
			6/14/02	Timothy Rausch - food	CDJ	24913	56.00		
			6/14/02	Timothy Rausch - cost of living expenses	CDJ	24913	40.00		
			6/14/02	Jerry Warren - 4 hours ride time to Shipwatch	CDJ	24914	36.06		
			7/15/02	Wachovia Bank - lodging in IOP	CDJ	25102	232.86		
			9/20/02	William Blackwell - 4 hours ride time	CDJ	25456	24.00		
			9/20/02	William Blackwell - food	CDJ	25456	56.00		
			9/20/02	Jerry Chappell - 4 hours drive time	CDJ	25457	64.00		
			9/20/02	Jerry Chappell - food	CDJ	25457	56.00		
			10/14/02	Wachovia Bank - Masters Inn	PJ	10.31.02	136.35		
							27,351.47	31,149.54	-3,798.07
Shipwatch							27,351.47	31,149.54	-3,798.07
Report							27,351.47	31,149.54	-3,798.07

7/16/12 at 11:50:01.50

Page: 7

GLASSTEC, INC.
Job Ledger Report

For the Period From Jan 1, 2000 to Dec 31, 2009

Filter Criteria includes: 1) IDs from Shipwatch to Shipwatch. Report order is by ID. Report is printed including Balance Forward and including Retainage.

Job ID	GL Acct ID	GL Acct Description	Trx Date	Trans Description	Jrnl	Trans Ref	Debit Amt	Credit Amt	Net DR/CR

577

0000016
GlassTec

January 25, 2004

Lester Griffin, GM
Shipwatch Horizontal Regime
7600 Palmetto Drive
Isle of Palms, South Carolina 29451

Dear Sir:

We were unaware of any issues Shipwatch has with our work and are disappointed to know that you have decided to hire another company to complete our contract. Typically, if there is a problem with workmanship or product, the contractor is given the opportunity to correct the problem. However, if the contract is withdrawn by the owner for no apparent reason, then the owner becomes responsible for the remaining work on the contract.

The installation of these windows has never been an easy project. Each installation involved woodwork, flashing installation, and problem solving. It would be difficult for any contractor unfamiliar with the previous installations to install the windows with no difficulty.

We hope to have the opportunity to complete this contract with Shipwatch. Once given that opportunity, we consider it our responsibility to address any issues with the remaining products as necessary. Otherwise, we will consider the contract closed.

We look forward to hearing from you soon.

Respectfully,

Ron Weaver
Glasstec, Inc.

0000001
GlassTec





CCS 777

579

APPLICATION AND CERTIFICATE FOR PAYMENT

AIA DOCUMENT G702

To Owner: SHIPWATCH PROPERTY Project: PHASE I
7800 PALMETTO DRIVE
ISLE OF PALMS, S.C.
From Contractor: CAROLINA CONCRETE SYSTEMS, INC.
P.O. BOX 13149
CHARLESTON, S.C. 29422

Application No.: 12
Period to: 4/25/2004
Project No.:
Contract Date:

Distribution To:
☐ Owner
☐ Architect
☐ Contractor

Contract For:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the contract.
Continuation sheet, AIA document G703, is attached.

1. Original Contract Sum..... \$ 249,546.00
2. Net change by Change Orders..... \$ 624,516.00
3. Contract Sum to date..... \$ 874,062.00
4. Total completed/ stored materials to date... \$ 810,547.20
5. Retainage:
 a. \$ 13,194.76
 b. % of stored material..... \$
Total Retainage..... \$ 13,194.76
6. Total earned less retainage..... \$ 797,352.44
7. Less previous certificates for payment..... \$ 762,391.44
8. Current payment due..... \$ 34,961.00
9. Balance to finish, including retainage..... \$ 76,709.56

Change Order Summary	Additions	Deductions
c/o # 8	37650	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief, the work covered by this Application for Payment has been completed in accordance with the contract documents, that all amounts have been paid by the Contractor for work which previous Certificates of Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____
ROBERT M. WIGGINS PRESIDENT
State of: South Carolina
County of: Charleston
Subscribed and sworn to before me this _____ day of _____

Notary Public:

My commission expires:

Architect's Certificate for Payment

In accordance with the Contract Documents, based on on-site observations and

the data comprising this application, the Architect certifies to the Owner that to the Architect's knowledge, information and belief the work has progressed as indicated the quality of the work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

Amount Certified..... \$ _____

Attach explanation if amount certified differs from the amount applied for. Initial all figures on this application and on the continuation sheet that are changed to conform to the amount certified.

By: _____ Date: _____

This certificate is not negotiable. The amount certified is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this contract.

AIA DOCUMENT G702, APPLICATION AND CERTIFICATE FOR PAYMENT, 1992 EDITION. AIA, THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE, N.W., WASHINGTON, DC 20004-6292. WARNING: UNLICENSED PHOTOCOPYING VIOLATES U.S. COPYRIGHT LAWS AND WILL SUBJECT THE VIOLATOR TO LEGAL PROSECUTION.
CAUTION: You should use an original AIA document which has this caution in red. An original assures that changes will not be obscured as may occur when documents are reproduced.

CONTINUATION SHEET

AIA DOCUMENT G703

(Instructions on reverse side)

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractors signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use column 1 on contracts where variable retainage for line items may apply.

Application No.:
Application Date:
Period to:
Architects Project No.:

CCS 778

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G		H Balance To Finish
			From Previous Application	Completed This Period		Total Completed And Stored To Date	% G/C	
1	CHIMNEY REPAIRS	\$129,800.00	\$129,800.00	\$0.00	\$0.00	\$129,800.00	100%	\$0.00
2	VENT PIPE SEALANT	\$10,740.00	\$10,740.00	\$0.00	\$0.00	\$10,740.00	100%	\$0.00
1	CHANGE ORDER #1							
1	REMOVE & REPLACE METAL STUD FRAMING ON CHIMNEYS	\$4,235.00	\$4,235.00	\$0.00	\$0.00	\$4,235.00	100%	\$0.00
2	CHIMNEY FLASHING 316 STAINLESS STEEL CAP TO BE 63 MIL POWDER COAT ALUMINUM	\$4,500.00	\$4,500.00	\$0.00	\$0.00	\$4,500.00	100%	\$0.00
3	ADD NEW SHEATHING TO ROOF TO SUPPORT FLASHING BATTENS & TILE	\$2,035.00	\$2,035	\$0.00	\$0.00	\$2,035.00	100%	\$0.00
4	REMOVE & REPLACE BALCONY PARTY WALLS	\$89,440.00	\$89,440.00	\$0.00	\$0.00	\$89,440.00	100%	\$0.00
5	REPLACE FLASHING ON PARTY WALLS ON PENTHOUSE 5TH FLOOR OCEAN SIDE	\$9,360.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$9,360.00
6	TEMPORARILY CAULK ALL FLASHING ON ROOF PARAPET AND PENT HOUSE PRIVACY WALL ON GOLF COURSE SIDE	\$7,400.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$7,400.00
		\$257,510.00	\$240,760.00	\$0.00	\$0.00	\$240,760.00		\$16,760.00

AIA DOCUMENT G703, CONTINUATION SHEET FOR G702, 1992 EDITION, AIA, THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, DC 20005-5292. Warning: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

Caution: Use only an original AIA document which has this warning printed in red. An Original assures that changes will not be obscured as may occur when documents are reproduced.

CONTINUATION SHEET

AIA DOCUMENT G703

(Instructions on reverse side)

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractors signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use column 1 on contracts where variable retainage for line items may apply.

Application No.:
Application Date:
Period to:
Architects Project No.:

CCS 779

A Item No.	B Description of Work	C Scheduled Value	D		F Materials Presently Stored	G		H Balance To Finish
			Work Completed From Previous Application	Completed This Period		Total Completed And Stored To Date	% G/C	
7	REMOVE & REPLACE OF DAMAGED PARTY WALLS AT @ CHIMNEY	\$10,395.00	\$10,395.00	\$0.00	\$0.00	\$10,395.00	100%	\$0.00
7A	REMOVE & REPLACE PRIVACY WALLS ON 6TH FL PENTHOUSE	\$20,880.00	\$20,880.00	\$0.00	\$0.00	\$20,880.00	100%	\$0.00
	CHANGE ORDER#2							
1	REMOVE & REPLACE EIFS SYSTEM ON HEATED WALLS ADJACENT TO NEW PRIVACY WALLS. REMOVE & RE-INSTALL LIGHT FIXTURES	\$22,464.00	\$17,971.20	\$0.00	\$0.00	\$17,971.20		\$4,490.80
2	REMOVE & REPLACE EIFS SYSTEM ON HEATED WALLS ADJACENT TO NEW PARTY WALLS	\$43,600.00	\$43,600.00	\$0.00	\$0.00	\$43,600.00	100%	\$0.00
3	SMALL END CHIMNEYS AND WALLS ON PENTHOUSE 2@ BLD	\$107,200.00	\$107,200.00	\$0.00	\$0.00	\$107,200.00	100%	\$0.00
4	REMOVE & REPLACE PRIVACY WALLS. ON GOLF COURSE SIDE.	\$158,400.00	\$158,400.00	\$0.00	\$0.00	\$158,400.00	100%	\$0.00
		\$362,939.00	\$358,448.20	\$0.00	\$0.00	\$358,448.20	0%	\$4,492.80

AIA DOCUMENT G703. CONTINUATION SHEET FOR G702. 1992 EDITION. AIA. THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, DC 20005-5292. Warning: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

Caution: Use an original AIA document which has this warning printed in red. An Original assures that changes will not be obscured as may occur when documents are reproduced.

CONTINUATION SHEET
AIA DOCUMENT G703
(Instructions on reverse side)

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractors signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use column 1 on contracts where variable retainage for line items may apply.

Application No.:
Application Date:
Period to:
Architects Project No.:

CCS 780

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G		H Balance To Finish
			From Previous Application	Completed This Period		Total Completed And Stored To Date	% G/C	
1	CHANGE ORDER #3 REMOVE & REPLACE EIFS HEATED WALL 4TH & 5TH FLOOR	\$110,688.00	\$110,688.00	\$0.00	\$0.00	\$110,688.00	100%	\$0.00
1	CHANGE ORDER #4 INSTALL BITUTHENE TEMPORARILY OVER PARAPET WALL TIL PHASE 2	\$1,700.00	\$1,700.00	\$0.00	\$0.00	\$1,700.00	100%	\$0.00
2	REMOVE 12 WINDOWS 5TH FL OF A & B BLDG AND FLASH	\$3,100.00	\$3,100.00	\$0.00	\$0.00	\$3,100.00	100%	\$0.00
3	INSTALL 12 NEW WINDOWS ON 5TH FL	\$12,240.00	\$12,240.00		0	\$12,240.00	100%	\$0.00
4	REPAINT 4 NEW CHIMNEY CAPS THAT WERE ORDERED PRIOR TO ROOF COLOR SECTION	\$1,080.00	\$1,080.00	\$0.00	\$0.00	\$1,080.00	100%	\$0.00
5	REPAIR CONCRETE ON PENTHOUSE BALCONY WALL TO SLAB VOID BLDG A & B	\$1,760.00	\$1,760.00			\$1,760.00	100%	\$0.00
6	REMOVE & REPLACE 4TH FLOOR CORRIDOR END WALL ON B BLD DUE TO NO FLASHING	\$1,840.00	\$1,840.00	\$0.00	\$0.00	\$1,840.00	100%	\$0.00
		\$132,408.00	\$132,408.00	\$0.00	\$0.00	\$132,408.00	100%	\$0.00

AIA DOCUMENT G703. CONTINUATION SHEET FOR G702. 1992 EDITION. AIA, THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, DC 20005-5292. Warning: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

Caution: Do not use an original AIA document which has this warning printed in red. An Original assures that changes will not be obscured as may occur when documents are reproduced.

CONTINUATION SHEET

AIA DOCUMENT G703

(Instructions on reverse side)

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractors signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use column 1 on contracts where variable retainage for line items may apply.

Application No.:

Application Date:

Period to:

Architects Project No.:

CCS 781

A	B	C	D	E	F	G		H
Item No.	Description of Work	Scheduled Value	Work Completed	Completed	Materials Presently Stored	Total Completed And Stored To Date	% G/C	Balance To Finish
			From Previous Application	This Period				
7	TEMPORARILY REPAIR SMALL END CHIMNEYS ON C BLD UNTIL PHASE II	\$1,170.00	\$1,170.00	\$0.00	\$0.00	\$1,170.00	100%	\$0.00
1	CHANGE ORDER # 5 REMOVE FLASHING & REINSTALL NEW FLASHING ON 12 CHIMNEYS	\$10,608.00	\$10,608.00	\$0.00	\$0.00	\$10,608.00	100%	\$0.00
2	REMOVE FLASHING & STUCCO AND INSTALL NEW RECEIVERS	\$5,208.00	\$5,208.00	\$0.00	\$0.00	\$5,208.00	100%	\$0.00
1	CHANGE ORDER # 6 CONCRETE REPAIR TO WALL SLAB VOID ON BLD C	\$920.00	\$920.00	\$0.00	\$0.00	\$920.00	100%	\$0.00
2	CONCRETE REPAIR TO 3 BALCONY RAIL POST	\$1,640.00	\$1,640.00	\$0.00	\$0.00	\$1,640.00	100%	\$0.00
3	REMOVE 12 WINDOWS FLASH AND REINSTLL BLDG C & D	\$3,100.00	\$3,100.00	\$0.00	\$0.00	\$3,100.00	100%	\$0.00
1	CHANGE ORDER # 7 CONCRETE REPAIR WALL TO SLAB VOID BLD D	\$920.00	\$920.00	\$0.00	\$0.00	\$920.00	100%	\$0.00
		\$23,566.00	\$23,566.00	\$0.00	\$0.00	\$23,566.00	100%	\$0.00

AIA DOCUMENT G703. CONTINUATION SHEET FOR G702, 1992 EDITION. AIA, THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, DC 20005-5292. Warning: Unclassified photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

Caution: You should use an original AIA document which has this warning printed in red. An Original assures that changes are as intended as may occur when documents are reproduced.

CONTINUATION SHEET

AIA DOCUMENT G703

(Instructions on reverse side)

AIA Document G702, APPLICATION AND CERTIFICATE FOR PAYMENT, containing Contractors signed Certification, is attached. In tabulations below, amounts are stated to the nearest dollar. Use column 1 on contracts where variable retainage for line items may apply.

Application No.:

Application Date:

Period to:

Architects Project No.:

CCS 782

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		F Materials Presently Stored	G Total Completed And Stored To Date		H Balance To Finish
			From Previous Application	Completed This Period			% G/C	
2	CONCRETE REPAIR TO BALCONY RAIL UNIT D324.	\$547.00	\$547.00	\$0.00	\$0.00	\$547.00	100%	\$0.00
3	REMOVE & INSTALL NEW FRAMING INSULATION AND DRYWALL AT GARAGE ENTRY ON ALL 4 BLD	\$19,650.00	\$19,650.00	\$0.00	\$0.00	\$19,650.00	100%	\$0.00
4	REMOVE BAY WINDOWS THAT HAVE BEEN REPLACE AND INSTALL PROPER FLASHING & REINSTALL	\$10,152.00	\$0.00	\$0.00	\$0.00	\$0.00	0%	\$10,152.00
5	REMOVE & REPLACE 12 OLD BAY WINDOWS	\$29,640.00	\$0.00	\$0.00	\$6,000.00	\$0.00	0%	\$23,640.00
6	CHANGE ORDER # 8 ADD 3 MORE BAY WINDOWS TO REPLACE 3 ORDERED BY GLASSTEC	\$7,410.00	\$0.00	\$4,940.00	\$0.00	\$4,940.00	66%	\$2,470.00
7	Qty 24 WINDOWS 1ST, 2ND & 3RD FLOOR END WALLS. 23" X42"	\$30,240.00	\$0.00	\$30,240.00	\$0.00	\$30,240.00	100%	\$0.00
		\$97,639.00	\$20,197.00	\$35,180.00	\$6,000.00	\$55,377.00	57%	\$42,262.00

AIA DOCUMENT G703. CONTINUATION SHEET FOR G702, 1992 EDITION. AIA. THE AMERICAN INSTITUTE OF ARCHITECTS, 1735 NEW YORK AVENUE N.W., WASHINGTON, DC 20005-5282. Warning: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

Caution: *Do not use an original AIA document which has this warning printed in red. An Original assures that changes will not be obscured as may occur when documents are reproduced

SHIPWATCH
FAX 843-588-6722

Charleston Glass Company
4231 Spruill Ave.
N. Charleston, SC 29405

Q-U-O-T-E 001-114842
Date: 10/22/2003

Windows - 10# 16254R

ATT: BOB WIGGINS

Sold-to: CAROLINA CONCRETE
SHIP WATCH
WILD DUNES

Sales Rep: TW Installer: PO-#: Terms: C.O.D.

ARRANGEMENTS

In: Out:
RANDY GAVE WO

INSTALL-NOTES: SHIP WATCH-WILD DUNES

QTY	PRODUCTS-&SERVICES	-IV-LOC-	--TOTAL--
1	LABOR FWHSC LABOR AND SERVICE CHARGE N/A LOOK AT MORE WINDOWS BOB WIGGINS 729-2510 LESTER 886-5267 OFFICE 343-3382 MOBILE	1	.00
28e 23" x 42" } X 0 SLIDING WINDOWS 8e 47" x 49" } TO MATCH 1ST ROUND			
MATERIAL, TAX, LABOR, & DEMO			
TOTAL - \$34,643.00			
Material: .00 Labor: .00 Tax: .00 Deductible: .00 TOTAL: .00 Deposit: .00 Payments: .00			
-B-A-L-A-N-C-E-			.00

PRICE BASED ON PREVIOUSLY INSTALLED WINDOWS

WINDOWS ARE ORDERED ON EXPRESS FROM KFCO
ADD 3 WEEKS ON SHIPPING.

TERMS: 1/2 DEPOSIT REQUIRED/BALANCE UPON COMPLETION
ORDERS ARE PLACED UPON RECEIPT OF YOUR DEPOSIT.

104.144
Charleston Glass0541

SIGNATURE: _____ DATE: _____





P.O. BOX 12806
CHARLESTON, S.C. 29422
PHONE (843) 795-0450
FAX (843) 795-0307

January 7, 2004

Memorandum
2002-50

TO: Shipwatch Horizontal Property Regime, Charlie Rhoden c/o Lester Griffin
FROM: Bob Sisnroy
SUBJECT: Results of Meeting and Visual Survey December 30, 2003
DATE: January 6, 2004
COPY TO: Glasgow Roofing
Carolina Concrete Systems

On December 20, 2003 a limited visual survey of the ongoing roof replacement and Durock exterior cladding system was performed. This was conducted in conjunction with a meeting between Carl Grisie, Lester Griffin and myself. The purpose of this memorandum is to summarize the results of the site visit.

- I. During the site visit, a limited visual survey of the roof replacement was performed. Based on the survey, the following items must be addressed.
 1. Chimney caps on both C Building and D Building are not adequately fastened as addressed in the letter signature dated December 5, 2003. As delineated in the letter, it was agreed that 3/8 inch stainless steel lag bolts would be installed. Currently, there is poorly installed thin shank screws which is unsatisfactory.
 2. Mira dry sticky back roof water barrier is not weather lapped at the party wall/roof intersection on the fifth floor street side roofs. This was discussed with Glasgow Roofing on October 31, 2003. It was indicated that this would be properly weather lapped right away. Although this may be accomplished in the course of the panel installation, I received no confirmation this would be accomplished.
 3. Heavily trimmed chimney caps at the parapet wall intersection must be counter flashed at the parapet wall end.
 4. All corner chimney inboard corners must be fully counter flashed at the roof/wall intersection.



CCS 1929

5. Chimney caps trimmed to accommodate chimney counter flashing must be repaired with additional counterflashing down to the parapet cap.

II. A limited visual survey of the Durock exterior cladding system installation was accomplished during the site. Based on the visual survey, the following items must be addressed.

1. Heavy mold was observed on the inner wall dry wall on the right side wall elevation looking from the street. It was agreed with Dave Hill that the area of mold contamination would be cleaned in accordance with proper protocol. It was also agreed that numerous damaged metal studs would be sistered with new studs.
2. Observations of the side elevation bay window units revealed the sill flashing currently is of inadequate length. Therefore, the Durock terminations at the wall corner intersections are exposed allowing an avenue for water intrusion. Also, the flashing offset is now improper for a sound engineered sealant joint at the sill. Therefore, it is recommended that the flashing be replaced with proper new flashing properly integrated at the wall. However, it was agreed that a site meeting and evaluation would be performed with the window installer and Carolina Concrete Systems to determine if a possible alternative was acceptable.
3. Partial wall installation integrating the Durock system with existing EIFS at the end corner walls was discussed. It was agreed that the typical wall section from the corner to the sliding glass door frame would be fully replaced with the Durock system.
4. Damage to the Seal-O-Flex stair tower roof was evident due to the edge flashing being pushed up to accommodate installation of the Durock board. It was agreed that heavy seal tape would be installed on the membrane tears to make a waterproof condition until the stairwell membrane roofing is replaced.
5. No evidence of kickouts at the sloped party wall terminations was observed. It will be necessary for kickouts to be installed.
6. Wall/deck corner intersections must have engineered sealant joints as a minimum.

III. Progress on the roof replacement is as follows.

1. Building C top mansard is approximately 2/3 complete. All remaining roof surfaces have panels installed.

2. Building D roof demolition is still required at the lower mansard roof on both ends of the building, the elevator tower and one stairwell. Roofing panels have been installed on the ocean side roof.

IV. General

1. It should be noted that approval for payment of requested job progress draws will not be provided if outstanding deficiencies exist. It is the responsibility of the respective contractors to ensure that deficiencies due not exist.

Robert G. Sisnroy
Robert G. Sisnroy 1/7/04

Charleston Glass
 4231 SPRUILL AVE.
 NORTH CHARLESTON, SOUTH CAROLINA
 (843) 747-7371
 (FAX) 747-0188

1-7-04

CAROLINA CONCRETE
 BOB WILKINS
 SHIPWATCH JOB

INSTALL
 3 - 736⁰⁰
 2208⁰⁰
 9 INSTALLED 736⁰⁰
 6624⁰⁰
 12 @ 1971⁰⁰
 23652⁰⁰
 32484⁰⁰

REMOVE EACH BAY WINDOW
 INSTALL NEW FORMED FLASHING
 REINSTALL EXISTING SYSTEM
 RESERL PERIMETER + ALL JOINTS

TOTAL MATERIAL, DAY, + LABOR - @ \$736. -

* DOES NOT INCLUDE BROKEN GLASS, INCORRECT EXISTING
 PART REPLACEMENT, ETC.

FURNISH + INSTALL A NEW SYSTEM
 BRONZE 2"x4 1/2" STREETCART SYSTEM (PAINTED
 WITH BRONZE TEMPLER) GLASS,

* DEMO OF EXISTING BY OTHERS

* INCLUDES MATERIAL, DAY, + LABOR - \$1,971. -

* ALSO INCLUDED IS NEW SIM FINISHING

REWORK BASED ON 1 PER DAY
 NEW BASED ON 2 PER DAY

Thanks

Andy

CCS 635



CHARLESTON GLASS & MIR Fax:8437470188

**** Transmit Conf. Report ****

P.1

Mar 30 2004 10:21

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
8865815	NORMAL	30.10:21	0'46"	3	# O K	

BB6-5B15

Charleston Glass Co.

4231 SPRUILL AVE.
NORTH CHARLESTON, SOUTH CAROLINA 29405
(843) 747-7371
(FAX) 747-0188

3-30-04

TO: BOB WILKINS

FROM: RAMON

3 TOTAL SHEETS

CONTRACT

36	SLIDING WINDOWS	34,643.-
14	BAY WINDOWS @1971	27,594.-
		\$62,237.-

INVOICE

36	SLIDING WINDOWS	34,643.-
2	BAY WINDOWS @1971	3,942
	METAL + WOOD FOR THE 12	6,000.
	OTHER BAY WINDOWS	

104.14d
Charleston Glass0643



TOTAL INVOICE

\$44,585.00

BB6-SB15

Charleston Glass Co.

4231 SPRUILL AVE.
NORTH CHARLESTON, SOUTH CAROLINA 29405
(843) 747-7371
(FAX) 747-0188

3-30-04

To: BOB WIGGINS

FASHI RANBY

3 TOTAL SHEETS

CONTRACT

36	SLIDING WINDOWS	34,643.-
14	BAY WINDOWS @1971	<u>27,594.-</u>
		\$62,237.-

INVOICE

36	SLIDING WINDOWS	34,643.-
2	BAY WINDOWS @1971	3,942
	METAL + WAX FOR THE 12	6,000.
	OTHER BAY WINDOWS	<u> </u>

TOTAL INVOICE \$44,585.00

10-14-04

8 MORE BAY WINDOWS - @1971

Randy

104.144
Charleston Glass0540

✓ GlasTec ★ A 101
 ✓ GlasTec ★ 201
 ✓ GLASTEC ★ 301
 GLASS ONLY

106
 206-GLASTEC ★ ✓
 306

B Bid

107
 ✓ GLASTEC ★ 207
 307

112 GLASTEC ★ ✓
 212 GLASTEC ★ GLASS ONLY ✓
 312 GLASTEC ★ GLASS ONLY ✓

C Bid

N	S
113	118 GLASTEC ★
213	218 - GLASTEC ★
313	318 GLASTEC ★

D Bid

N	S
124	119 - ~~GLASTEC ★~~
224	219 -
324	319 -

104.144
 Charleston Glass 0539

★ - indicates Glasstec installed Recently
 but Needs to be Remove, Flashed
 AND REINSTALLED

Charleston Glass Co.

4231 Spruill Ave.

North Charleston, South Carolina 29405

(843) 747-7371 • FAX (843) 747-0188

24 HOUR SERVICE

Charleston Glass Company
4231 Spruill Ave.
Charleston, SC 29405

INVOICE

001-334956

Date: 03/25/2004

Order to: CAROLINA CONCRETE SYSTEMS
P.O. BOX 13149
CHARLESTON SC 29422

FAXED

MAR 26 2004

By

(43)588-6721 F(843)588-6722

Rep: TW Installer: EVE PO-#: SHIPWATCH

Terms: NET 30

ARRANGEMENTS

In: Out:
RANDY GAVE WO

TALL-NOTES: SHIP WATCH-WILD DUNES \$34643.000
FOR ALUM. WINDOWS - \$ 27594.00 FOR ALUM. BAYS
TOTAL 62237.00

PRODUCTS & SERVICES	IV-LOC	TOTAL
RD DRAW REQUEST LOOK AT MORE WINDOWS BOB WIGGINS 729-2510 LESTER 886-5267 OFFICE 343-3382 MOBILE	1	

Deductible: .00
TOTAL inc. tax: 44,585.00
Deposit: .00
Payments: .00

-B-A-L-A-N-C-E- 44,585.00

CCS 753

EXHIBIT

10

Charleston Glass Co.

Charleston Glass Company
Spruill Ave.
Charleston, SC 29405

4231 Spruill Ave.
North Charleston, South Carolina 29405
(843) 747-7371 • FAX (843) 747-0188 Date: 10/14/2004
24 HOUR SERVICE

to: CAROLINA CONCRETE SYSTEMS
P.O. BOX 13149
CHARLESTON SC 29422

31586-6721 F(843)588-6722

Repr: EVE Installer: EVE PO: SHIPWATCH Terms: NET 30

ALL-NOTES: SHIPWATCH VILLAS \$ 62231.00

PRODUCTS & SERVICES	QUANTITY	UNIT PRICE	TOTAL
RD			
DRAW REQUEST			
2ND DRAW 15768.00			
SEE BREAKDOWN!!!!			
WINDOWS & DOORS CONTRACT 62231.00			
1ST REQUEST 032504 46585.00			
BALANCE 17645.00			
2ND REQUEST 8 HOME DAYS 15768.00 THIS INVOICE			
BALANCE DUE AFTER THIS 1870.00			
			Deductible: .00
			TOTAL inc. tax: 15,768.00
			Deposit: .00
			Payment: .00
B-A-L-A-N-C-E			15,768.00

CCS 851

CERTIFICATE OF SERVICE

I hereby certify that I have on this day served counsel for the opposing party(s) with a copy of the foregoing and within Defendant Glasstec, Inc.'s Memorandum in Support of Motion for Summary Judgment by submitting same via *E-mail* to the following:

Attorney for Plaintiff:

R. Patrick Flynn, Esq.
rpf@roblaw.net

Attorneys for First Exteriors LLC:

James H Elliott, Jr., Esq.
jelliott@richardsonplowden.com
J.J. Anderson, Esq.
janderson@arlawsc.com

Attorneys for Robert G Sisinroy and Sisinroy Engineering, LLC:

Tyler Paul Winton, Esq.
twinton@carlockcopeland.com
Paul Eliot Sperry, Esq.
psperry@carlockcopeland.com

Attorney for BASF Corp.:

David Root, Esq.
droot@kernodlelaw.com

Attorney for EFCO Corp.:

R. Britton Kelly, Esq.
bkelly@rrhlawfirm.com

Attorney for Gary Freeman Architect, Inc and Gary Freeman, Individually:

K. Michael Barfield, Esq.
mbarfield@barnwell-whaley.com

Attorneys for Charleston Glass Company, Inc.:

Marshall A. Earhart, Esq.,
marshall@maybanklaw.com
Amanda R. Maybank, Esq.
amanda@maybanklaw.com

Attorneys for Acrocrete, Inc.:

Greg Horton, Esq.
ghorton@wcsr.com
Adriane Belton, Esq.
abelton@wcsr.com

Attorney for Glasgow Roofing Co., Inc.:

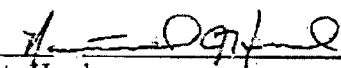
Samia H. Nettles, Esq.
snettlles@richardsonplowden.com

Attorneys for Carolina Concrete Systems, Inc.:

David C. Cobb, Esq.
dcobb@turnerpadget.com
Jennie Smith, Esq.
jsmith@turnerpadget.com

The following will receive hand delivered copies on January 15, 2015:
R. Patrick Flynn, Esq. and David C. Cobb, Esq.

This 14th day of January, 2015
Beaufort, South Carolina



Nate Head
Paralegal for Stacey P. Canaday

TURNER PADGET

TURNER PADGET GRAHAM & LANEY PA.

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

Jennie M. Smith

REPLY TO:

E-Mail: jsmith@TurnerPadget.com

Writer's Direct Dial: (843) 576-2805

Direct Fax: (843) 577-1627

March 29, 2013

Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, South Carolina 29401

Re: Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et al.

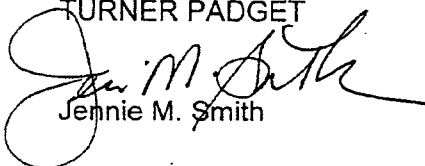
Docket No.: 2012-CP-10-3857
TP File No.: 490.1123

Dear Ms. Armstrong:

I have enclosed the original and one copy of Carolina Concrete Systems, Inc.'s Answer and Crossclaims in this matter. Please file the original and return a clocked copy in the return envelope. By copy of this letter, I am serving counsel of record. Thank you for your assistance.

Sincerely,

TURNER PADGET



Jennie M. Smith

JMS/sec
enclosures

BUSINESS • LITIGATION • SOLUTIONS

1

Gateway Center • Suite 200 • 40 Calhoun Street (29401) • PO Box 22129 • Charleston, SC 29413
Phone (843) 576-2800 • Fax (843) 577-3369 • turnerpadget.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	Docket No.: 2012-CP-10-3857
SHIPWATCH CONDOMINIUM ASSOCIATION, INC.,	)	
Plaintiff,	)	
v.	)	CAROLINA CONCRETE SYSTEMS, INC.'S ANSWER AND CROSSCLAIMS AGAINST SISNROY ENGINEERING, LLC; ROBERT G. SISNROY; TERRENCE McKELVEY; GLASGOW ROOFING, INC; GLASTEC, INC.; SPECTECH, INC.; CHIMNEY SWEEPS, INC.; LOW COUNTRY CHIMNEYS, INC.; EFCO CORP.; W.C. JOHNSTON ARCHITECTURAL SALES, INC.; CHARLESTON GLASS COMPANY, INC.; FIRST EXTERIORS, LLC; GARY FREEMAN ARCHITECT, INC.; and GARY FREEMAN
CAROLINA CONCRETE SYSTEMS, INC., SISNROY ENGINEERING, LLC;	)	
ROBERT G. SISNROY, individually;	)	
TERRENCE J. McKELVEY; GLASGOW ROOFING, INC.; GLASTEC, INC.;	)	
SPECTECH, INC.; SONNEBORN, INC.;	)	
CHIMNEY SWEEPS, INC.; LOW COUNTRY CHIMNEYS, INC.; EFCO CORP.; W.C. JOHNSTON ARCHITECTURAL SALES, INC.;	)	
CHARLESTON GLASS COMPANY, INC.; FIRST EXTERIORS, LLC;	)	
ACROCRETE, INC.; BASF CORP.;	)	
GARY FREEMAN ARCHITECT, INC.;	)	
GARY FREEMAN, individually,	)	
Defendants.	)	
	)	(Jury Trial Demanded)

Defendant Carolina Concrete Systems, Inc. ("Defendant") answers the Complaint; crossclaims against Sisnroy Engineering, LLC, Robert G. Sisnroy, Terrence McKelvey, Glasgow Roofing, Inc., GlassTec Inc., Spectech, Inc., Chimney Sweeps, Inc., Low Country Chimneys, Inc., W.C. Johnston Architectural Sales, Inc., Charleston Glass Company, Inc., First Exteriors, LLC, Gary Freeman Architect, Inc., and Gary Freeman; and respectfully shows unto this Court:

FOR A FIRST DEFENSE

1. Except as specifically admitted, qualified or explained, Defendant denies the allegations and demands strict proof of each allegation.

2. Defendant lacks sufficient knowledge or information to form a belief about the truth of the allegations of Paragraph 1; therefore, Defendant denies the allegations and demands strict proof of each allegation.

3. Defendant admits the allegations of Paragraph 2.

4. Paragraphs 3-19 do not require a response.

5. Defendant admits only so much of the allegations of Paragraph 20 at this time as allege Defendant worked at the Project. Defendant denies the remaining allegations of Paragraph 20 at this time and demands strict proof of each allegation.

6. Paragraph 21 does not require a response.

7. Defendant admits only so much of the allegations of Paragraph 22 as allege a civil lawsuit may be filed in Charleston County.

8. Paragraph 23 does not require a response.

9. Defendant denies the allegations of Paragraphs 24-25 and demands strict proof of each allegation.

10. Paragraph 26 does not require a response.

11. Paragraph 27 contains statements of law, to which no response is required.

12. Defendant denies the allegations of Paragraphs 28-33 and demands strict proof of each allegation.

13. Paragraph 34 does not require a response.

14. Defendant denies the allegations of Paragraphs 35-47 and demands strict proof of each allegation.

15. Paragraph 48 does not require a response.

16. Defendant denies the allegations of Paragraphs 49-51 and demands strict proof of each allegation.

17. Paragraph 52 does not require a response.

18. Defendant admits only so much of the allegations of Paragraph 53 that allege it contracted with Shipwatch at Wild Dunes and/or Shipwatch Horizontal Property Regime to provide certain work and services, and Defendant craves reference to the applicable contracts and agreements between these parties. Defendant denies the

remaining allegations of Paragraph 53 that are inconsistent with the applicable contracts and agreements and demands strict proof of each allegation.

19. Defendant denies the allegations of Paragraphs 54-58 and demands strict proof of each allegation.

20. Paragraph 59 does not require a response.

21. Paragraph 60 contains statements of law, to which no response is required. To the extent a response is required, Defendant denies the allegations and demands strict proof of each allegation.

22. Defendant denies the allegations of Paragraphs 61-62 and demands strict proof of each allegation.

23. Paragraph 63 does not require a response.

24. Defendant denies the allegations of Paragraphs 64-68 and demands strict proof of each allegation.

25. Paragraph 69 does not require a response.

FOR A SECOND DEFENSE
(Comparative Negligence)

26. FURTHER ANSWERING, Defendant alleges any injury and/or damage sustained was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the part of the Defendant. Because Plaintiff's negligence or willfulness is greater than the alleged negligence or willfulness of Defendant, Plaintiff is barred from recovery against this party.

FOR A THIRD DEFENSE
(Comparative Negligence)

27. FURTHER ANSWERING, Defendant alleges any injury or damage sustained was caused by the negligence or willfulness of Plaintiff, combining, concurring, and contributing with the negligence or willfulness, if any, on the part of Defendant. Therefore, the Court should reduce any recovery awarded to Plaintiff for the alleged injuries and damage based upon the percentage of negligence or willfulness attributed to Plaintiff.

FOR A FOURTH DEFENSE
(Compliance with Industry Customs, Practices, and Standards)
(Acceptance by Plaintiff)

28. FURTHER ANSWERING, Defendant alleges any and all work or services that Defendant provided met all construction industry customs, practices, and standards applicable, and Plaintiff approved or directed any deviation by this party from the applicable construction industry customs, practices, and standards.

FOR A FIFTH DEFENSE
(Failure to Maintain)

29. FURTHER ANSWERING, Defendant alleges Plaintiff failed to maintain the structure against normal wear, tear, and deterioration due to age and the elements, which is the direct and proximate cause of any damage suffered. Therefore, Plaintiff's claims are barred.

FOR A SIXTH DEEFNSE
(Failure to State a Claim)

30. FURTHER ANSWERING, Defendant submits the allegations of the Complaint do not state facts sufficient to constitute a cause of action against Defendant. Accordingly, this Court should dismiss the Complaint.

FOR A SEVENTH DEFENSE
(Punitive Damages)

31. FURTHER ANSWERING, Defendant alleges that any award of punitive damages would violate the constitutional safeguards provided it by the Due Process Clause of the Fourteenth Amendment of the United States Constitution and under the Due Process Clause of Article I, Section 3 of the South Carolina Constitution because the determination of punitive damages does not bear any reasonable relationship to the amount of actual damages, if any, suffered by or awarded.

FOR AN EIGHTH DEFENSE
(Failure to Mitigate)

32. FURTHER ANSWERING, Defendant alleges Plaintiff failed to mitigate its damages, if any.

FOR A NINTH DEFENSE
(Reservation of Rights)

33. FURTHER ANSWERING, Defendant has not had an opportunity to conduct a sufficient investigation or engage in adequate discovery touching on the circumstances of these allegations. Defendant intends to act as best it can to inform itself as to the pertinent facts and prevailing circumstances surrounding any reported injury or damage and gives notice of the intent to assert any further affirmative defenses that the information-gathering process may indicate is supported by fact and law, including but not limited to, defense that the action is barred in whole or in part by any applicable statute, contract, release, covenant, or the doctrine of laches. Thus, Defendant reserves the right to amend this pleading to assert any such defenses.

FOR A TENTH DEFENSE
(Third Party)

34. FURTHER ANSWERING, Defendant alleges any injury or damage sustained was due to and caused by the negligence, gross negligence, willfulness, wantonness, or carelessness on the part of some third party over whom Defendant had or has no authority or control. Therefore, Defendant is not liable in any amount.

FOR AN ELEVENTH DEFENSE
(Statute of Limitations)

35. FURTHER ANSWERING, Defendant alleges the applicable statute of limitations may bar these claims.

FOR A TWELFTH DEFENSE AND AS CROSSCLAIMS AGAINST
SISNROY ENGINEERING, LLC; ROBERT G. SISNROY;
TERRENCE MCKELVEY; GLASGOW ROOFING, INC.;
GLASSTEC INC.; SPECTECH, INC.; CHIMNEY SWEEPS, INC.;
LOW COUNTRY CHIMNEYS, INC.; W.C. JOHNSTON
ARCHITECTURAL SALES, INC.; CHARLESTON GLASS
COMPANY, INC.; FIRST EXTERIORS, LLC;
GARY FREEMAN ARCHITECT, INC.; AND GARY FREEMAN
("OTHER DEFENDANTS")

36. Defendant incorporates the allegations from the above paragraphs.

37. Plaintiff sued Defendant Carolina Concrete Systems, Inc. claiming damages caused by allegedly defective products and/or construction work or services.

38. Defendant denies all of the substantive allegations against it made by Plaintiff.

39. By way of crossclaims, Defendant asserts claims against Sisroy Engineering, LLC; Robert G. Sisroy; Terrence McKelvey; Glasgow Roofing, Inc.; GlassTec Inc.; Spectech, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; W.C. Johnston Architectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Gary Freeman Architect, Inc.; and Gary Freeman ("Other Defendants").

FOR A FIRST CAUSE OF ACTION
AGAINST "OTHER DEFENDANTS"
(Negligence)

40. Defendant incorporates the allegations from the above paragraphs.

41. Upon information and belief, Other Defendants owed a duty to Defendant to exercise the degree of skill necessary to ensure that the labor, materials, goods, and services in connection with the construction of repairs at the Project conformed with the customary and ordinary standards of the building and construction industry, all applicable building codes, and to otherwise deliver the buildings free of construction defects.

42. Upon information and belief, Other Defendants were negligent, careless and reckless in the design, supervision, construction, inspection, and/or supplying of the work or materials outlined above and incorporated into the Project.

43. Upon information and belief, as a direct and proximate result of the negligence, carelessness, and recklessness, Defendant incurred damages in the amount of any money that it is adjudged to owe Plaintiff or which it pays Plaintiff in the settlement of Plaintiff's claims plus the cost of investigating and defending these claims.

44. Upon information and belief, Defendant is entitled to judgment for actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation, defense, and settlement of these claims.

FOR A SECOND CAUSE OF ACTION
AGAINST "OTHER DEFENDANTS"
(Breach of Warranty)

45. Defendant incorporates the allegations from the above paragraphs.

46. Other Defendants expressly or impliedly warranted to Defendant that all work performed would be performed in a careful, diligent, and workmanlike manner and that any materials and/or services designed, supplied, or sold by them for use on the project would be merchantable and fit for their intended or specific purposes.

47. Upon information and belief, Other Defendants breached their implied and/or express warranties of merchantability, workmanlike service, and/or fitness for a particular or intended purpose in the construction of the Project.

48. Upon information and belief, as a result of these breaches, Defendant has incurred damages in the amount of any money that it is adjudged to owe Plaintiff or which it pays Plaintiff in the settlement of Plaintiff's claims plus the cost of investigating and defending these claims.

49. Upon information and belief, Defendant is entitled to judgment for actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims, as well as costs and fees incurred in the investigation, defense, and settlement of these claims.

FOR A THIRD CAUSE OF ACTION
AGAINST "OTHER DEFENDANTS"
(Breach of Contract)

50. Defendant incorporates the allegations from the above paragraphs.

51. Defendant entered into oral and/or written contracts with Other Defendants, and Other Defendants provided work and materials for the project.

52. The contracts required Other Defendants to provide construction goods and/or services for the project that, among other things, would produce quality buildings free from defects that conformed to the contract documents, building codes, and industry standards. The contracts further required Other Defendants to supervise and direct their work using the best skill and attention.

53. Upon information and belief, Other Defendants breached the contract by failing to provide appropriate construction goods and/or services to the project, by failing to perform their work in a careful, diligent, and workmanlike manner, by failing to provide goods and/or services that resulted in quality buildings free from defects and otherwise in conformance with all contract documents, and by failing to provide goods and/or services that conformed with all appropriate building codes and industry standards.

54. Upon information and belief, as a result of these breaches, Defendant has incurred damages in the amount of any money that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims plus the costs of investigating and defending these claims.

55. Upon information and belief, Defendant is entitled to judgment for actual damages (collectively or individually) against Other Defendants in the amount of any monies that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation, defense, and settlement of these claims.

FOR A FOURTH CAUSE OF ACTION
AGAINST "OTHER DEFENDANTS"
(Indemnity)

56. Defendant incorporates into this cause of action the allegations of the above paragraphs.

57. Upon information and belief, Other Defendants negligently selected the materials and/or products and negligently installed and/or trained and instructed the installers about the proper manner for the installation of the materials and/or products.

58. To the extent, if any, that Defendant is held liable to Plaintiff, such liability would be a direct and proximate result of the wrongful acts, omissions, negligence, and/or presentation of Other Defendants, which has damaged Defendant because Defendant has been subjected to liability and has incurred consequential damages in having to expend fees and costs in defending this action.

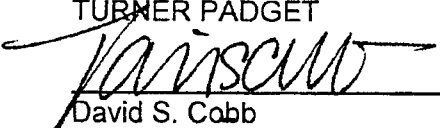
59. To the extent, if any, that the materials and/or products were defective or deficient in design, engineering, materials, installation, installation obstruction, and/or were not merchantable or fit for its particular or intended purposes, such defects and

deficiencies would result from the breach of the express and implied contractual obligations and warranties that Other Defendants provided. These acts would have damaged Defendant because Defendant has been subjected to liability and has incurred consequential damages in having to expend fees and costs in defending this action.

60. Defendant is entitled to indemnification from Other Defendants for any liability Defendant is found to have to Plaintiff, and Defendant would be entitled to damages for Other Defendants' negligence and for Other Defendants' breaches of the implied and express warranties. In such a case, Defendant would be entitled to recover from Other Defendants for any moneys that it is adjudged to owe Plaintiff or which it pays Plaintiff in settlement of Plaintiff's claims as well as costs and fees incurred in the investigation, defense, and settlement of these claims. To the extent, if any, Defendant is liable to Plaintiff, Defendant is entitled to contractual and equitable indemnity from Other Defendants for any judgment or settlement amount, including reasonable attorney's fees. Further, to the extent liability or damages are imposed against Defendant, Defendant alleges its liability to Plaintiff, if any, is only secondary or passive and Plaintiff's damages, if any, were solely and proximately caused by the active or primary fault of Other Defendants. Therefore, Defendant pleads the right of contractual and equitable indemnity exists in its favor against Other Defendants because Defendant is exposed to the liability in this case, if at all, because of the primary wrongful acts and/or omissions of Other Defendants.

WHEREFORE, Defendant Carolina Concrete Systems, Inc. demands judgment in its favor dismissing the Complaint; awarding it judgment on its Crossclaims (if required) against Defendants Sisroy Engineering, LLC, Robert G. Sisroy, Terrence McKelvey, Glasgow Roofing, Inc., GlassTec Inc., Spectech, Inc., Chimney Sweeps, Inc., Low Country Chimneys, Inc., W.C. Johnston Architectural Sales, Inc., Charleston Glass Company, Inc., First Exteriors, LLC, Gary Freeman Architect, Inc., and Gary Freeman ("Other Defendants"); and awarding costs, attorney's fees, and such other further relief as the Court deems just and equitable.

TURNER PADGET


David S. Cobb

Post Office Box 22129

Charleston, South Carolina 29413-2129

Direct: (843) 576-2803

Fax: (843) 577-1629

DCobb@TurnerPadget.com

ATTORNEYS FOR CAROLINA
CONCRETE SYSTEMS, INC.

Charleston, South Carolina

March 28, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

Docket No.: 2012-CP-10-3857

SHIPWATCH CONDOMINIUM)
ASSOCIATION, INC.,)

Plaintiff,)

v.)

CERTIFICATE OF SERVICE

CAROLINA CONCRETE SYSTEMS,)
INC., SISNROY ENGINEERING, LLC;)
ROBERT G. SISNROY, individually;)
TERRENCE J. McKELVEY; GLASGOW)
ROOFING, INC.; GLASTEC, INC.;)
SPECTECH, INC.; SONNEBORN, INC.;)
CHIMNEY SWEEPS, INC.; LOW)
COUNTRY CHIMNEYS, INC.; EFCO)
CORP.; W.C. JOHNSTON)
ARCHITECTURAL SALES, INC.;)
CHARLESTON GLASS COMPANY,)
INC.; FIRST EXTERIORS, LLC;)
ACROCRETE, INC.; BASF CORP.;)
GARY FREEMAN ARCHITECT, INC.;)
GARY FREEMAN, individually,)

Defendants.)
_____)

On March 29, 2013, I emailed a copy of **Carolina Concrete Systems, Inc.'s Answer and Crossclaims** to:

R. Patrick Flynn
177 Meeting Street, Suite 300
Charleston, South Carolina 29401
Attorney for Plaintiff

Samia H. Nettles
40 Calhoun Street, Suite 220
Charleston, South Carolina 29401
Attorney for Glasgow Roofing Company, Inc.

Wesley D. Peel
1735 St. Julian Place
Columbia, South Carolina 29202
Attorney for W.C. Johnston Architectural Sales, Inc.

Paul E. Sperry
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
**Attorney for Sisnroy Engineering, LLC and
Robert G. Sisnroy**

James H. Elliot
P.O. Box 630
Charleston, South Carolina 29401
Attorney for First Exteriors, LLC

Erin D. Dean
Post Office Box 2055
Beaufort, South Carolina 29901-2055
Attorney for Glasstec, Inc.

K. Michael Barfield
Post Office Drawer H
Charleston, South Carolina 29402
**Attorney for Gary Freeman Architect, Inc.
and Gary Freeman, Individually**

R. Britton Kelly
Post Office Box 893
Charleston, South Carolina 29402
Attorney EFCO Corp., Inc.

D. Andrew Williams
Post Office Box 1473
Columbia, South Carolina 29202
Attorney for BASF Corp.

Amanda R. Maybank
Post Office Box 12579
Charleston, South Carolina 29422
Attorney for Charleston Glass & Mirror



Susan Creel

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Shipwatch Condominium Association, Inc.,)
Plaintiff,)
vs.)
Carolina Concrete Systems, Inc.; Sisroy)
Engineering, LLC, Robert G. Sisroy,)
individually; Terrence J. McKelvey;)
Glasgow Roofing, Inc.; GlassTec, Inc.;)
Spectech, Inc.; Sonneborn, Inc.; Chimney)
Sweeps, Inc.; Low Country Chimneys, Inc.;)
EFCO Corp.; W.C. Johnston Architectural)
Sales, Inc.; Charleston Glass Company,)
Inc.; First Exteriors, LLC; Acrocrete, Inc.;)
BASF Corp.; Gary Freeman Architect, Inc.;)
Gary Freeman, individually;)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2012-CP-10-3857

**ANSWER OF DEFENDANT BASF
CORPORATION TO PLAINTIFF'S
COMPLAINT**

(Jury Trial Demanded)

FILED
2013 SEP 23 PM 2:27
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant BASF Corporation ("BASF") responds to Plaintiff's Complaint as follows:

1. As a preliminary matter, on information and belief, the Defendant styled in the Summons and Complaint as "Sonneborn, Inc." is improperly identified. Sonneborn® is a registered trademark, licensed to BASF Corporation, which identifies a line of products manufactured by BASF Corporation.
2. Every allegation of the Complaint not specifically admitted below is denied.
3. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 through 8.
4. BASF denies the allegations of Paragraph 9.
5. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 10 through 16.

6. BASF denies the allegations of Paragraph 17, as stated.
7. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 18 and 19.
8. BASF denies the allegations of Paragraph 20, as stated, as to it.
9. The allegations of Paragraph 21 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.
10. The allegations of Paragraph 22 constitute legal conclusions which require no response. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

11. Responding to Paragraph 23, BASF incorporates its prior responses as if fully stated here.
12. BASF denies the allegations of Paragraphs 24 and 25.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

13. Responding to Paragraph 26, BASF incorporates its prior responses as if fully stated here.
14. The allegations of Paragraphs 27 through 33 are directed at another defendant and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

15. Responding to Paragraph 34, BASF incorporates its prior responses as if fully stated here.
16. The allegations of Paragraphs 35 through 47 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

17. Responding to Paragraph 48, BASF incorporates its prior responses as if fully stated here.
18. The allegations of Paragraphs 49 through 51 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

19. Responding to Paragraph 52, BASF incorporates its prior responses as if fully stated here.
20. The allegations of Paragraphs 53 through 58 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION

21. Responding to Paragraph 59, BASF incorporates its prior responses as if fully stated here.
22. BASF denies the allegations of Paragraphs 60, 61, and 62 as to it.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

23. Responding to Paragraph 63, BASF incorporates its prior responses as if fully stated here.
24. BASF denies the allegations of Paragraphs 64 through 68 as to it.
25. As stated, Paragraph 69 does not appear to require a response. To the extent a response is deemed required, BASF denies any allegation of fault or liability as to it.

FOR A SECOND DEFENSE

26. Plaintiff has failed to state facts sufficient to constitute a cause of action against BASF.

FOR A THIRD DEFENSE

27. Upon information and belief, Plaintiff's damages, if any, were caused by the acts or omissions of other parties over whom BASF had no control.

FOR A FOURTH DEFENSE

28. Upon information and belief, Plaintiff's claims are barred or limited by the doctrines of comparative negligence and/or assumption of the risk.

FOR A FIFTH DEFENSE

29. Upon information and belief, some or all of Plaintiff's claims must be reduced or are barred by the applicable statute of limitations and/or statute of repose.

FOR A SIXTH DEFENSE

30. Upon information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

FOR A SEVENTH DEFENSE

31. Any claim by Plaintiff for punitive damages against BASF cannot be sustained, because:
- a. any award of punitive damages under South Carolina law (1) without bifurcating the trial of all punitive damages issues; (2) for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law; (3) without proof of every element beyond a reasonable doubt; and/or (4) that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that a jury may impose would violate BASF's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution;
 - b. an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and

punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of BASF, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to judicial review on the basis of objective standards, would violate BASF's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment, and by the South Carolina Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy;

- c. an award of punitive damages under state law without the same protections that are accorded to criminal defendants, including protection against unreasonable searches and seizures, double jeopardy, self-incrimination, the right to confront adverse witnesses, a speedy trial, and the effective assistance of counsel would violate BASF's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination;
- d. any award of punitive damages based on anything other than BASF's conduct in connection with the specific incident that is the subject of this lawsuit would

violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy, because any other judgment for punitive damages in this case cannot protect BASF against impermissible multiple punishment for the same wrong.

FOR AN EIGHTH DEFENSE

32. Upon information and belief, any right to recover damages against BASF is barred by the independent and intervening negligent actions of others.

FOR A NINTH DEFENSE

33. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's failure to mitigate damages.

FOR A TENTH DEFENSE

34. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, by operation of the economic loss doctrine.

FOR AN ELEVENTH DEFENSE

35. BASF specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty, if any, in bar of any recovery.

FOR A TWELFTH DEFENSE

36. If work performed and/or products supplied by BASF were defective, which is denied, failure to give reasonable notice is pled in bar of any recovery under a warranty claim or otherwise.

FOR A THIRTEENTH DEFENSE

37. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's spoliation of evidence.

FOR A FOURTEENTH DEFENSE

38. BASF performed its work in conformance with the applicable plans and specifications, and thus Plaintiff's claims are barred or limited by operation of the *Spearin* doctrine.

FOR A FIFTEENTH DEFENSE

39. Upon information and belief, Plaintiff's claims are barred or limited by its lack of standing.

FOR A SIXTEENTH DEFENSE

40. Upon information and belief, Plaintiff's claims are barred or limited by the doctrine of completion and acceptance.

FOR A SEVENTEENTH DEFENSE

41. Upon information and belief, Plaintiff's claims are barred by its failure to make a claim within the applicable warranty period.

FOR AN EIGHTEENTH DEFENSE

42. Upon information and belief, Plaintiff's claims are barred or limited as a function of insufficiency of process and/or insufficiency of service of process.

FOR A NINETEENTH DEFENSE

43. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's failure to give timely notice to BASF.

FOR A TWENTIETH DEFENSE

44. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's, or its representative's, misuse, abuse, mistreatment, and/or misapplication of BASF's materials.

FOR A TWENTY-FIRST DEFENSE

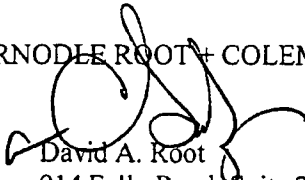
45. Upon information and belief, Plaintiff's claims are barred or limited as a function of the learned intermediary and/or sophisticated user doctrine(s).

FOR AN ADDITIONAL DEFENSE
(Reservation/Non-Waiver and Adoption)

46. BASF specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure. Further, BASF adopts by reference all defenses, including affirmative defenses, where relevant and consistent with BASF's position, as alleged by other parties in this action.

WHEREFORE, having fully answered Plaintiff's Complaint, BASF demands a trial by jury and prays that the Complaint be dismissed, with costs, and for such other relief as the Court deems proper.

KERNODLE ROOT + COLEMAN

By: 

David A. Root
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
droot@kernodlelaw.com

ATTORNEYS FOR BASF CORPORATION

Charleston, South Carolina
September 20, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of *the Answer of BASF Corporation to Plaintiff's Complaint* was sent as noted below:

Via U.S. Mail and Email

R. Patrick Flynn, Esquire
Robertson Hollingsworth & Flynn
177 Meeting Street, Suite 300
Charleston, SC 29401

ATTORNEYS FOR PLAINTIFF

Via Email Only

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901-2055

ATTORNEYS FOR DEFENDANT GLASSTEC, INC.

Via Email Only

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting St., Suite 400
Charleston SC 29401

**ATTORNEYS FOR DEFENDANT W.C. JOHNSTON ARCHITECTURAL SALES, INC.
AND DEFENDANT EFCO CORP.**

Via Email Only

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401

**ATTORNEYS FOR DEFENDANTS SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

Via Email Only

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun Street, Suite 220
Charleston, SC 29401

ATTORNEYS FOR DEFENDANTS FIRST EXTERIORS, LLC

FILED
2013 SEP 23 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT

Via Email Only

J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
ATTORNEYS FOR DEFENDANTS FIRST EXTERIORS, LLC

Via U.S. Mail and Email

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
ATTORNEYS FOR DEFENDANTS CAROLINA CONCRETE SYSTEMS, INC.

Via Email Only

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
***ATTORNEYS FOR DEFENDANTS GARY FREEMAN ARCHITECT, INC. AND
GARY FREEMAN, INDIVIDUALLY***

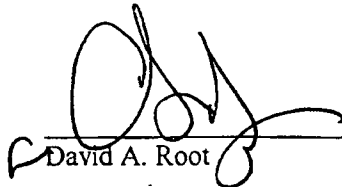
Via Email Only

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun Street, Suite 220
Charleston, SC 29401
ATTORNEYS FOR DEFENDANTS GLASGOW ROOFING

Via Email Only

Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
ATTORNEYS FOR DEFENDANT CHARLESTON GLASS COMPANY, INC.

September 20, 2013



David A. Root

914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone (843) 795-7800
Fax (843) 795-3032

**KERNODLE
ROOT &
COLEMAN**
ATTORNEYS AT LAW

David A. Root, Esquire
droot@kernodlelaw.com

September 20, 2013

Honorable Julie J. Armstrong
Clerk of Court
Charleston County
100 Broad Street, #106
Charleston, SC 29401

Re: *Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc.;
Sisnroy Engineering, LLC; Robert G. Sisnroy, individually; Terrence J.
McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn,
Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C.
Johnston Arcitectoral Sales, Inc.; Charleston Glass Company, Inc.; First
Exteriors, LLC; Acrocrete Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary
Freeman, individually*
County of Charleston / Case No. 2012-CP-10-3857
KR+C File No.: 8092-1

Dear Julie:

Enclosed for filing is the original and one copy of *Defendant BASF Corp's Answer* in the above-referenced matter. Please file the original, and return the date-stamped to me in the envelope provided for your convenience.

By copy of this correspondence to opposing counsel, I am serving him with a copy of the same.

Should you have any questions or require additional information, please do not hesitate to contact me.

kernodlelaw.com



September 20, 2013
Page 2

Sincerely,

KERNODLE ROOT + COLEMAN



David A. Root

DAR/jlc
Enclosures

cc: R. Patrick Flynn, Esquire (w/encl)
Erin D. Dean, Esquire / Stacey P. Canaday, Esquire (w/encl)
D. Andrew Williams, Esquire (w/encl)
R. Britton Kelly Esquire (w/encl)
Paul Sperry, Esquire / Tyler P. Winton, Esquire (w/encl)
James H. Elliott, Jr., Esquire (w/encl)
J.J. Anderson, Esquire / Danielle Wegener, Esquire (w/encl)
David S. Cobb, Esquire (w/encl)
K. Michael Barfield, Esquire (w/encl)
Samia Nettles, Esquire (w/encl)
Amanda R. Maybank, Esquire / Marshall A. Earhart, Esquire (w/encl)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

Oscar Mendiondo, individually and as
representative of a class of similarly
situated owners of condominiums units in
the horizontal property regime known as
Shipwatch Condominiums,

Plaintiff,

vs.

Carolina Concrete Systems, Inc.; Sisnroy
Engineering, LLC; Robert G. Sisnroy,
individually; Terrence J. McKelvey;
Glasgow Roofing, Inc.; GlassTec, Inc.;
Spectech, Inc.; Sonneborn, Inc.; Chimney
Sweeps, Inc.; Low Country Chimneys, Inc.;
EFCO Corp.; W.C. Johnston Architectural
Sales, Inc.; Charleston Glass Company,
Inc.; First Exteriors, LLC; Acrocrete, Inc.;
BASF Corp.; Gary Freeman Architect, Inc.;
Gary Freeman, individually;

Defendants.

Sisnroy Engineering, LLC and Robert G.
Sisnroy, individually,

Third-Party Plaintiffs,

vs.

Shipwatch Condominium Association,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
Case No. 2012-CP-10-3858

FILED
2013 SEP 23 PM 2:29
JULIE J. ARMSTRONG
CLERK OF COURT

ANSWER OF DEFENDANT BASF
CORPORATION TO PLAINTIFF'S
COMPLAINT

(Jury Trial Demanded)

Defendant BASF Corporation ("BASF") responds to Plaintiff's Complaint as follows:

1. As a preliminary matter, on information and belief, the Defendant styled in the Summons and Complaint as "Sonneborn, Inc." is improperly identified. Sonneborn® is a registered

trademark, licensed to BASF Corporation, which identifies a line of products manufactured by BASF Corporation.

2. Every allegation of the Complaint not specifically admitted below is denied.
3. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 1 through 8.
4. BASF denies the allegations of Paragraph 9.
5. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 10 through 16.
6. BASF denies the allegations of Paragraph 17, as stated.
7. BASF lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 18 and 19.
8. BASF denies the allegations of Paragraph 20, as stated, as to it.
9. The allegations of Paragraph 21 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.
10. The allegations of Paragraph 22 constitute legal conclusions which require no response. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

11. Responding to Paragraph 23, BASF incorporates its prior responses as if fully stated here.
12. BASF denies the allegations of Paragraphs 24 and 25.

FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION

13. Responding to Paragraph 26, BASF incorporates its prior responses as if fully stated here.

14. The allegations of Paragraphs 27 through 33 are directed at another defendant and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION

15. Responding to Paragraph 34, BASF incorporates its prior responses as if fully stated here.
16. The allegations of Paragraphs 35 through 47 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION

17. Responding to Paragraph 48, BASF incorporates its prior responses as if fully stated here.
18. The allegations of Paragraph 49 through 51 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION

19. Responding to Paragraph 52, BASF incorporates its prior responses as if fully stated here.
20. The allegations of Paragraph 53 through 58 are directed at other defendants and do not require a response from BASF. To the extent a response is required, BASF denies any allegation of fault or liability as to it.

FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION

21. Responding to Paragraph 59, BASF incorporates its prior responses as if fully stated here.
22. BASF denies the allegations of Paragraphs 60, 61, and 62 as to it.

FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION

23. Responding to Paragraph 63, BASF incorporates its prior responses as if fully stated here.
24. BASF denies the allegations of Paragraphs 64 through 68 as to it.

25. As stated, Paragraph 69 does not appear to require a response. To the extent a response is deemed required, BASF denies any allegation of fault or liability as to it.

FOR A SECOND DEFENSE

26. Plaintiff has failed to state facts sufficient to constitute a cause of action against BASF.

FOR A THIRD DEFENSE

27. Upon information and belief, Plaintiff's damages, if any, were caused by the acts or omissions of other parties over whom BASF had no control.

FOR A FOURTH DEFENSE

28. Upon information and belief, Plaintiff's claims are barred or limited by the doctrines of comparative negligence and/or assumption of the risk.

FOR A FIFTH DEFENSE

29. Upon information and belief, some or all of Plaintiff's claims must be reduced or are barred by the applicable statute of limitations and/or statute of repose.

FOR A SIXTH DEFENSE

30. Upon information and belief, some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, and/or estoppel.

FOR A SEVENTH DEFENSE

31. Any claim by Plaintiff for punitive damages against BASF cannot be sustained, because:
- a. any award of punitive damages under South Carolina law (1) without bifurcating the trial of all punitive damages issues; (2) for the purpose of compensating Plaintiff for elements of damage not otherwise recognized by South Carolina law; (3) without proof of every element beyond a reasonable doubt; and/or (4) that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount on the amount of punitive damages that a jury

may impose would violate BASF's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the South Carolina Constitution;

- b. an award of punitive damages under South Carolina law by a jury that (1) is not provided a standard of sufficient clarity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits on punitive damages imposed by the applicable principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, including the alleged corporate status of BASF, (4) is permitted to award punitive damages under a standard for determining liability for punitive damages that is vague and arbitrary and does not define with sufficient clarity the conduct or mental state that makes punitive damages permissible, and (5) is not subject to judicial review on the basis of objective standards, would violate BASF's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment, and by the South Carolina Constitution's provisions providing due process, equal protection, and a guaranty against double jeopardy;
- c. an award of punitive damages under state law without the same protections that are accorded to criminal defendants, including protection against unreasonable searches and seizures, double jeopardy, self-incrimination, the right to confront adverse witnesses, a speedy trial, and the effective assistance of counsel would violate BASF's rights under the Fourteenth Amendment to the United States

Constitution and the Fourth, Fifth, and Sixth Amendments as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and the rights to confront witnesses, a speedy trial and effective assistance of counsel and protection against unreasonable searches and seizures, double jeopardy and compelled self-incrimination;

- d. any award of punitive damages based on anything other than BASF's conduct in connection with the specific incident that is the subject of this lawsuit would violate the due process clause of the Fourteenth Amendment to the United States Constitution and the double jeopardy clause of the Fifth Amendment as incorporated into the Fourteenth Amendment and the South Carolina Constitution's provisions providing for due process and a guaranty against double jeopardy, because any other judgment for punitive damages in this case cannot protect BASF against impermissible multiple punishment for the same wrong.

FOR AN EIGHTH DEFENSE

32. Upon information and belief, any right to recover damages against BASF is barred by the independent and intervening negligent actions of others.

FOR A NINTH DEFENSE

33. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's failure to mitigate damages.

FOR A TENTH DEFENSE

34. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, by operation of the economic loss doctrine.

FOR AN ELEVENTH DEFENSE

35. BASF specifically pleads and incorporates herein the terms of any limitations of remedy in any applicable warranty, if any, in bar of any recovery

FOR A TWELFTH DEFENSE

36. If work performed and/or products supplied by BASF were defective, which is denied, failure to give reasonable notice is pled in bar of any recovery under a warranty claim or otherwise.

FOR A THIRTEENTH DEFENSE

37. Upon information and belief, Plaintiff's right to recover damages from BASF is barred, in whole or in part, due to Plaintiff's spoliation of evidence.

FOR A FOURTEENTH DEFENSE

38. BASF performed its work in conformance with the applicable plans and specifications, and thus Plaintiff's claims are barred or limited by operation of the *Spearin* doctrine.

FOR A FIFTEENTH DEFENSE

39. Upon information and belief, Plaintiff's claims are barred or limited by its lack of standing.

FOR A SIXTEENTH DEFENSE

40. Upon information and belief, Plaintiff's claims are barred or limited by the doctrine of completion and acceptance.

FOR A SEVENTEENTH DEFENSE

41. Upon information and belief, Plaintiff's claims are barred by its failure to make a claim within the applicable warranty period.

FOR AN EIGHTEENTH DEFENSE

42. Upon information and belief, Plaintiff's claims are barred or limited as a function of insufficiency of process and/or insufficiency of service of process.

FOR A NINETEENTH DEFENSE

43. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's failure to give timely notice to BASF.

FOR A TWENTIETH DEFENSE

44. Upon information and belief, Plaintiff's claims are barred or limited as a result of Plaintiff's, or its representative's, misuse, abuse, mistreatment, and/or misapplication of BASF's materials.

FOR A TWENTY-FIRST DEFENSE

45. Upon information and belief, Plaintiff's claims are barred or limited as a function of the learned intermediary and/or sophisticated user doctrine(s).

FOR A TWENTY-SECOND DEFENSE

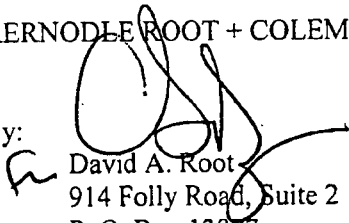
46. Upon information and belief, Plaintiff's attempts to proceed with this matter as a class action are barred on one or more of the following grounds:
- a. The putative class is insufficiently defined;
 - b. Joinder of all members of the putative class is not impracticable;
 - c. The questions of law or fact in this matter are not common to the class;
 - d. The claims or defenses of the allegedly representative party are not typical to the claims and defenses of the putative class;
 - e. The allegedly representative party will not fairly and adequately protect the interests of the putative class; and/or
 - f. The amount in controversy as to each member of the class is insufficient.

FOR AN ADDITIONAL DEFENSE
(Reservation/Non-Waiver and Adoption)

47. BASF specifically reserves any additional defenses, including affirmative defenses, as may be available or revealed to it during the course of its investigation and/or discovery in the case, and as are consistent with the South Carolina Rules of Civil Procedure. Further, BASF adopts by reference all defenses, including affirmative defenses, where relevant and consistent with BASF's position, as alleged by other parties in this action.

WHEREFORE, having fully answered Plaintiff's Complaint BASF demands a trial by jury and prays that the Complaint be dismissed, with costs, and for such other relief as the Court deems proper.

KERNODLE ROOT + COLEMAN

By: 

David A. Root
914 Folly Road, Suite 2 (29412)
P. O. Box 13897
Charleston, SC 29422
(843) 795-7800
(843) 795-3032 Fax
droot@kernodlelaw.com

ATTORNEYS FOR BASF CORPORATION

Charleston, South Carolina

September 20, 2013

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date a copy of *the Answer of BASF Corporation to Plaintiff's Complaint* was sent as noted below:

Via U.S. Mail and Email

R. Patrick Flynn, Esquire
Robertson Hollingsworth & Flynn
177 Meeting Street, Suite 300
Charleston, SC 29401

ATTORNEYS FOR PLAINTIFF

Via Email Only

Erin D. Dean, Esquire
Stacey P. Canaday, Esquire
Tupper, Grimsley & Dean, P.A.
P.O. Box 2055
Beaufort, SC 29901-2055

ATTORNEYS FOR DEFENDANT GLASSTEC, INC.

Via Email Only

R. Britton Kelly, Esquire
Rosen, Rosen & Hagood, LLC
151 Meeting St., Suite 400
Charleston SC 29401

**ATTORNEYS FOR DEFENDANT W.C. JOHNSTON ARCHITECTURAL SALES, INC.
AND DEFENDANT EFCO CORP.**

Via Email Only

Paul Sperry, Esquire
Tyler P. Winton, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401

**ATTORNEYS FOR DEFENDANTS SISNROY ENGINEERING, LLC AND
ROBERT G. SISNROY, INDIVIDUALLY**

Via Email Only

James H. Elliott, Jr., Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun Street, Suite 220
Charleston, SC 29401

ATTORNEYS FOR DEFENDANTS FIRST EXTERIORS, LLC

FILED
2013 SEP 23 PM 2:29
JULIE J. ARISTONING
CLERK OF COURT

Via Email Only

J.J. Anderson, Esquire
Danielle Wegener, Esquire
Anderson, Reynolds & Stephens, LLC
37 ½ Broad Street
Charleston, SC 29401
ATTORNEYS FOR DEFENDANTS FIRST EXTERIORS, LLC

Via U.S. Mail and Email

David S. Cobb, Esquire
Turner Padgett Graham & Laney, PA
P.O. Box 22129
Charleston, SC 29401
ATTORNEYS FOR DEFENDANTS CAROLINA CONCRETE SYSTEMS, INC.

Via Email Only

K. Michael Barfield, Esquire
Barnwell Whaley Patterson & Helms
P.O. Drawer H
Charleston, SC 29402
***ATTORNEYS FOR DEFENDANTS GARY FREEMAN ARCHITECT, INC. AND
GARY FREEMAN, INDIVIDUALLY***

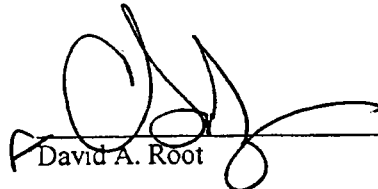
Via Email Only

Samia Nettles, Esquire
Richardson Plowden & Robinson, P.A.
40 Calhoun Street, Suite 220
Charleston, SC 29401
ATTORNEYS FOR DEFENDANTS GLASGOW ROOFING

Via Email Only

Amanda R. Maybank, Esquire
Marshall A. Earhart, Esquire
Maybank Law Firm, LLC
P.O. Box 12579
Charleston, SC 29422
ATTORNEYS FOR DEFENDANT CHARLESTON GLASS COMPANY, INC.

September 20, 2013



David A. Root

914 Folly Road, Suite 2
P.O. Box 13897
Charleston, SC 29422-3897
Phone (843) 795-7800
Fax (843) 795-3032

**KERNODLE
ROOT &
COLEMAN**
ATTORNEYS AT LAW

David A. Root, Esquire
droot@kernodelaw.com

September 20, 2013

Honorable Julie J. Armstrong
Clerk of Court
Charleston County
100 Broad Street, #106
Charleston, SC 29401

Re: *Oscar Mendiondo, individually and as representative of a class of similarly situated owners of condominiums units in the horizontal property regime known as Shipwatch Condominiums v. Carolina Concrete Systems, Inc.; Sisroy Engineering, LLC; Robert G. Sisroy, individually; Terrence J. McKelvey; Glasgow Roofing, Inc.; GlassTec, Inc.; Spectech, Inc.; Sonneborn, Inc.; Chimney Sweeps, Inc.; Low Country Chimneys, Inc.; EFCO Corp.; W.C. Johnston Arcitectural Sales, Inc.; Charleston Glass Company, Inc.; First Exteriors, LLC; Acrocrete Inc.; BASF Corp.; Gary Freeman Architect, Inc.; Gary Freeman, individually*
County of Charleston / Case No. 2012-CP-10-3858
KR+C File No.: 8092-2

Dear Julie:

Enclosed for filing is the original and one copy of *Defendant BASF Corp's Answer* in the above-referenced matter. Please file the original, and return the date-stamped to me in the envelope provided for your convenience.

By copy of this correspondence to opposing counsel, I am serving him with a copy of the same.

kernodelaw.com



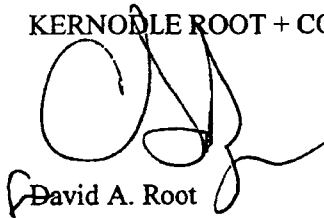
September 20, 2013

Page 2

Should you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,

KERNODLE ROOT + COLEMAN



David A. Root

DAR/jlc

Enclosures

cc: R. Patrick Flynn, Esquire (w/encl)
Erin D. Dean, Esquire / Stacey P. Canaday, Esquire (w/encl)
D. Andrew Williams, Esquire (w/encl)
R. Britton Kelly Esquire (w/encl)
Paul Sperry, Esquire / Tyler P. Winton, Esquire (w/encl)
James H. Elliott, Jr., Esquire (w/encl)
J.J. Anderson, Esquire / Danielle Wegener, Esquire (w/encl)
David S. Cobb, Esquire (w/encl)
K. Michael Barfield, Esquire (w/encl)
Samia Nettles, Esquire (w/encl)
Amanda R. Maybank, Esquire / Marshall A. Earhart, Esquire (w/encl)

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHARLESTON) Court of Common Pleas
) Case No. 2012-CP-10-3857
) 2012-CP-10-3858
 3)
 4 SHIPWATCH CONDOMINIUM ASSOCIATION,)
 INC., et al,)
 5 Plaintiff,)
 6 vs.) Transcript of Record
 7 CAROLINA CONCRETE SYSTEMS, ET AL,)
 8 Defendant.)
 9 DATE: October 27, 2014

10 B E F O R E:

11 The Honorable Judge R. Markley Dennis, Jr.

12

A P P E A R A N C E:

13

14 Patrick R. Flynn and Christopher M. Ramsey
For the Plaintiff

15

David Starr Cobb
For the Defendant, Carolina Concrete Systems

16

17

18

Karen V. Andersen, RMR, CRR, CSR
Circuit Court Reporter

19

20

21

22

23

24

25

1 THE COURT: Two motions for summary judgment.

2 MR. FLYNN: Well, I think one in each case.

3 THE COURT: Before you identify yourselves, all
4 memorandum filed in conjunction with this motion are
5 incorporated fully for the purposes of review. And each of
6 you may rely on the memos as submitted. Thank you very much.
7 Appreciate it.

8 All right. If you would identify yourselves.

9 MR. COBB: Good morning, Your Honor. I'm David
10 Cobb. I'm here on behalf of Carolina Concrete Systems, which
11 is the defendant, one of the defendants in both the Shipwatch
12 and the Mendiondo lawsuits. It is our motion for summary
13 judgment. We are doing it based on the statute of
14 limitations. I'll probably be about two minutes to explain
15 the motion.

16 THE COURT: Sure. Take your time.

17 MR. COBB: This is a condo project at Wild Dunes in
18 Isle of Palms. The lawsuit was filed against Carolina
19 Concrete Systems and various subcontractors in June of 2012.
20 The project was built in 1985. And none of these defendants
21 in this lawsuit had anything to do with the original
22 construction of the buildings.

23 Carolina Concrete Systems started around 2003 doing
24 various what we refer to as piecemeal repairs at various
25 parts of the buildings, all with contracts through the HOA.

1 The lawsuit that the plaintiffs filed in 2012 seeks
2 to recover costs and damages associated with the original
3 EIFS system applied to the building, sliding glass doors,
4 windows, of which were originally installed in the buildings
5 in 1995, and also for some other issues, such as failed and
6 peeling ceiling paint on balconies and some other things.
7 Those are damages that the plaintiffs seek to recover for in
8 this lawsuit.

9 And the reason why the statute of limitations
10 applies in this case, and clearly, three-quarters of what we
11 handed to you this morning as part of our summary judgment
12 motions, are various homeowner minutes and deposition
13 excerpts from two of the board members and from the regime
14 manager, Linda Jernigan.

15 Ms. Jernigan was at Shipwatch before Hugo left, but
16 came back in 2005, so has been there since 2005. The board
17 members, who we included as part of our package, include
18 Ernie Schawe, I think it's S-c-h-a-w-e, and also Ernie
19 Trombino, T-r-o-m-b-i-n-o. Those gentlemen and Ms. Jernigan
20 and the HOA minutes, which are 2006, 2007, and 2008, clearly
21 identify that the plaintiffs knew about problems with the
22 synthetic stucco, with the EIFS well before 2009.

23 In fact, probably the most telling piece of exhibit
24 is in September of 2008, Ms. Jernigan goes to the board
25 saying that she has a contract, an estimate for \$2.3 million

1 to do various repairs of the project, 1.8 million of which is
2 for the removal of the remaining parts of this synthetic
3 stucco off the buildings.

4 The 2003, 2004, 2005, moving forward, repairs that
5 Carolina Concrete Systems performed included removing some of
6 the EIFS off of some of the buildings, but not all of them.
7 The 2008 contract that Ms. Jernigan presented to the board
8 was for the removal of the remaining parts of the synthetic
9 stucco off of the buildings.

10 There are also -- in 2003, 2004, 2005, the HOA
11 implemented a program to remove somewhere in the neighborhood
12 of 5 to 15 sliding glass doors and some periodic windows
13 because of various leaks. And they have Bob Sisnroy out
14 there in 2006/2007 time frame as well. Mr. Sisnroy provided
15 them with reports showing them that they had problems with
16 the leaking sliding glass doors, and problems with leaking
17 windows at this project in 2006/2007. And, again, that is
18 the damage that they are including as part of this lawsuit.

19 Now, Carolina Concrete Systems also did work out
20 there in 2010 and so forth. If the claim is just going to be
21 related to that work, then I think they survive summary
22 judgment as to those claims. But as far as the work and cost
23 associated with removing things that they clearly knew about
24 in 2005, 2006, 2007 and 2008, that's what we are trying to
25 sever from this lawsuit. And that includes the sliding glass

1 doors, the windows, and the cost associated with removing the
2 synthetic stucco. Thank you.

3 MR. FLYNN: Your Honor, I have a couple of --

4 THE COURT: I don't need all of this. This is
5 summary judgment, isn't it?

6 MR. FLYNN: It is, Your Honor. Actually, one of the
7 things I will do is --

8 THE COURT: It's not going to influence me. Maybe
9 it will influence you. If it makes you feel better, put it
10 up.

11 MR. FLYNN: Yes, sir. Your Honor, I'm not sure
12 exactly what --

13 THE COURT: Well, why don't you start by telling me
14 how in the world you get any action for damages done for work
15 in 2005?

16 MR. FLYNN: Your Honor, because this has nothing to
17 do with the original artificial stucco.

18 THE COURT: Tell me about 2005.

19 MR. FLYNN: 2005, Your Honor, this was one project.
20 This began in 2002 and it ended in 2011.

21 THE COURT: Well, what I'm asking you for is the
22 work that was done and mistakes that you are claiming was
23 done -- were done in 2005.

24 MR. FLYNN: Your Honor, we had no idea that there
25 were problems.

1 THE COURT: That's your position?

2 MR. FLYNN: It is, Your Honor.

3 THE COURT: And notwithstanding Mr. Sisnroy's
4 report?

5 MR. FLYNN: Well, Your Honor, they corrected any
6 defects which were associated --

7 THE COURT: So there's no cause of action for
8 anything in 2005?

9 MR. FLYNN: Well, they corrected it as far as what
10 Mr. Sisnroy pointed out. But, Your Honor, in 2011, they were
11 getting ready to do the final stage of all of these repairs.
12 And they were all over the buildings all of the time, this
13 being the defendant, Carolina Concrete Systems. And, Your
14 Honor, I've got documentation in my brief --

15 THE COURT: Mr. Flynn, look, you are arguing the
16 same thing he just said. They are seeking action. They are
17 seeking to recover for work done after 2010. Fine. I've got
18 no gripe.

19 MR. FLYNN: Your Honor, what he's saying is that --

20 THE COURT: Well, I'm helping him. Granted. You
21 are entitled to sue him for anything you can relate to things
22 that he did in 2010. Okay? Thank you, sir.

23 MR. FLYNN: Thank you, Your Honor.

24 THE COURT: Prepare the order. Thank you.
25 Appreciate it.

1 And, Mr. Flynn, for the record, if you will give me
2 the name -- your name and party you are representing, please.

3 MR. FLYNN: Yes, sir. It's Patrick Flynn. I
4 represent the plaintiffs, Oscar Menciondo class action and
5 Shipwatch Homeowners Association.

6 MR. RAMSEY: Chris Ramsey also on behalf
7 Shipwatch.

8 THE COURT: Appreciate it. Mr. Flynn, I didn't mean
9 to cut you off with that, but it seemed to be more than
10 something. When I started hearing you, really focused on
11 that. Thank you very much.

12 MR. FLYNN: Yes, Your Honor.

13 (End of transcript.)

14
15
16
17
18
19
20
21
22
23
24
25

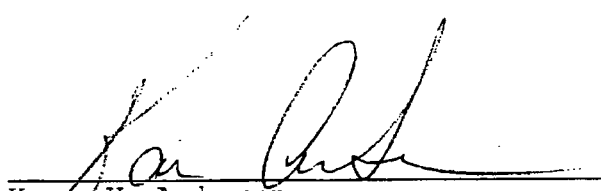
CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, Karen V. Andersen, Registered Merit Reporter
certified Realtime Reporter, and Notary Public for the State
of South Carolina at Large, do hereby certify that the
foregoing transcript is a true, accurate and complete
Transcript of Record of the proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 30th day of October, 2014, at Charleston,
Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

THE DEPOSITION OF LINDA JERNIGAN was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Tuesday, the 25th day of March 2014, at the offices of Turner Padgett, 40 Calhoun Street, Suite 200, in the City of Charleston, State of South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

A P P E A R A N C E S

For the Plaintiff:

ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. CHRISTOPHER RAMSEY

For the Defendants:

RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MR. JAMES ELLIOTT

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MR. JONATHAN J. ANDERSON

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. DAVID S. COBB

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. STACEY CANADAY

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

A P P E A R A N C E S (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MR. K. MICHAEL BARFIELD

RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street, Suite 220
Charleston, SC 29401
BY: MS. SAMIA H. NETTLES

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. R. BRITTON KELLY

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL A. EARHARDT

Reported by:

MS. JANICE O. DARBY
763 Gate Post Drive
Mt. Pleasant, SC 29464
(843) 814-7666

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 LINDA JERNIGAN

2 having been first duly sworn, was called as a
3 witness herein and was examined and testified as
4 follows:

5 E X A M I N A T I O N

6 BY MR. ELLIOTT:

7 Q Ms. Jernigan, good morning. My name is
8 James Elliott. I represent First Exteriors, LLC,
9 and Glasgow Roofing in this litigation brought by
10 the Shipwatch Homeowners' Association. I'm going to
11 take your deposition today. Have you ever given a
12 deposition before?

13 A No, I have not.

14 Q Well, the process is going to be, I'm
15 just going to ask you some questions throughout the
16 day. And one of the rules is you need to give us
17 verbal responses so our court reporter can take down
18 what you say. Okay?

19 A Mm-hmm. Yes.

20 Q That was my test. A lot of folks do
21 that. They will shake their head and make some
22 utterance to evidence a response, and we can't do
23 that today because we don't want Janice to have to
24 interpret what you say or she'll just write down a
25 nod or something, and then we won't know when the

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 some documents.

2 A I think when Lester Griffin was there, he
3 had no previous property management experience.

4 Q Was he the police officer?

5 A He was a police officer. So I think they
6 hired Mike Parades, CCM, to support him and give the
7 board advice until I came. Since I had experience,
8 they no longer needed Mike Parades.

9 Q Now, the history of Shipwatch, the
10 construction was in 1984 to '86? Do you know?

11 A It was turned over to the homeowner
12 association in 1984, April of 1984.

13 Q So construction was done by 1984?

14 A I assume all four buildings. I know A
15 and B were phase one. C and D was phase two. But
16 they were very close to the same time.

17 Q And they've always had -- they always
18 have a board of directors for the history of the
19 organization. Right?

20 A Correct.

21 Q And the board of directors meet monthly?

22 A No. They meet quarterly.

23 Q Typically does the manager attend the
24 meetings?

25 A Yes.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 to not take minutes.

2 A To not take minutes, right.

3 Q Do you know if that occurred here?

4 A I don't think so.

5 Q How was the decision made -- It's a broad
6 question, and we'll get into some detail, but how
7 was the decision made to file this lawsuit?

8 A We hired Sutton-Kennerly & Associates
9 Engineers to do a study of our buildings.

10 Q Who made that decision?

11 A The board.

12 Q It was a study brought on by what? Why
13 did you decide to do that?

14 A We had been doing upgrades to the
15 buildings piecemeal because of money, I would
16 assume. And we were doing -- Like they did the end
17 walls and the roofs, and then they started to do the
18 ocean side of two buildings. And Oscar Mendiondo as
19 president said, you know, we just need to be sure
20 that we're doing everything just right. So it was
21 his idea to hire someone to do a study of the
22 buildings, and Sutton-Kennerly had been highly
23 recommended to us.

24 Q Who gave you that recommendation?

25 A The first recommendation came from Bob

1 few windows, that sort of thing.
 2 Q Were all the sliding glass doors replaced
 3 after Hurricane Hugo?
 4 A I don't know. I don't recall that they
 5 were.
 6 Q Were the sliding glass doors --
 7 Obviously, the original construction, the sliding
 8 glass doors were in the complex. The building
 9 hasn't been changed.
 10 A Right.
 11 Q To that extent?
 12 A Correct.
 13 Q Do you know what the useful life on the
 14 sliding glass doors was?
 15 A No.
 16 Q Are there sliding glass doors in place
 17 currently that are original?
 18 A I don't know that they are original, but
 19 there are older doors in the building.
 20 Q Do you have any surveys that indicate
 21 when sliding glass doors were replaced?
 22 A I keep track of everything that has been
 23 replaced since 2003, 2004, before I came. I know
 24 what doors were replaced, and I know what doors have
 25 been replaced since I came.

1 Q Do you have that written down somewhere?
 2 A Mm-hmm.
 3 Q Yes?
 4 A Yes.
 5 Q Has that been produced?
 6 A I think so, yes.
 7 Q This is a collection of documents that is
 8 titled Attachments: 2010 Schedule. Just take a
 9 look at this and tell me if this is the document
 10 that you created to illustrate what sliding glass
 11 doors have been replaced and which ones are
 12 original.
 13 A These are definitely things that I've
 14 created. This is not the very last one, but this is
 15 of the fourth and fifth floor sliding glass doors.
 16 2010, I think, would have been the last year that we
 17 did any sliding glass doors. We were replacing
 18 three or four or five a year. I think we did ten
 19 one year, five, because it was so costly. We were
 20 only replacing those that were leaking.
 21 Q I'm trying to start with some sort of
 22 document control. I've put as a collection
 23 documents that seem to concern sliding glass doors,
 24 and they are not Bates stamped sequentially. For
 25 the record, they are all CCS documents, came from

1 Carolina Concrete's files: 1483, 1443, 1421, 1422,
 2 1423, 1234, 1220, 1206, 1187, 1188, 1189, 1193 and
 3 1194. Can you tell me which one of these documents
 4 that you created?
 5 A 1483 has my name on it. 1443 has my name
 6 on it. 1421 looks like something that I would do.
 7 Q Set the ones that you think you created
 8 aside separated from the ones that you did not.
 9 A I think I did all of these.
 10 Q Well, let's mark that as an exhibit then.
 11 A That's not my handwriting, but that's a
 12 form that I would have --
 13 Q Bates stamp number?
 14 A 1193 and 1194. I created the form, but I
 15 did not do the handwriting.
 16 Q Do you know if those documents combined
 17 illustrate all the sliding glass doors that have
 18 been removed and replaced?
 19 A Well, at least through 2009. But I think
 20 there were some in 2010, a few, all on the fourth
 21 and fifth floor.
 22 (Exhibit No. 1 marked for
 23 identification.)
 24 BY MR. ELLIOTT:
 25 Q When did you guys start replacing sliding

1 glass doors?
 2 A Before I came. '02 or '03 or '04, before
 3 I came, all of the first, second and third floor
 4 master bedrooms --
 5 Q Time out one second. Before you came in
 6 '90?
 7 A I came in 2005. Before I came back.
 8 Sorry.
 9 Q Do you know what sliders were replaced
 10 between -- Well, let me ask you this. Between '90
 11 and '93, were any sliding glass doors replaced? Do
 12 you know?
 13 A I don't know.
 14 Q Do you know if any were replaced between
 15 '93 and 2005?
 16 A Yes.
 17 Q Which ones?
 18 A As part of the project being done in the
 19 time frame of 2002, 2003, 2004, all of the first,
 20 second and third floor master bedroom sliding glass
 21 doors were replaced.
 22 Q Give me those dates one more time. '02
 23 to '04?
 24 A '02, '03, '04. When I came in 2005, they
 25 were completed.

1 Q All sliding glass doors master bedroom?
 2 A First, second and third floor.
 3 Q All buildings?
 4 A All four buildings.
 5 Q And how do you know that?
 6 A Because they were replaced.
 7 Q You looked at them and could tell?
 8 You've talked to people?
 9 A Yes. It was part of the project.
 10 Q Are there sliding glass doors on the
 11 ocean side other than the master bedrooms?
 12 A Living rooms all have sliding glass
 13 doors.
 14 Q Those were not replaced between '02 to
 15 '04?
 16 A They were not.
 17 Q And none on the fourth and fifth floors?
 18 A The fourth and fifth floors are
 19 different. That's what all of these papers are
 20 about. Fourth and fifth floor sliding glass doors
 21 were replaced --
 22 Q Exhibit 1 is about fourth and fifth
 23 floor, all buildings, only?
 24 A Correct.
 25 Q And they weren't touched until the

1 done at some point during 2005 and 2010, 2011 maybe.
 2 And then we replaced living rooms and
 3 fifth floor street side bedrooms as we could as they
 4 were leaking.
 5 Q The first phase of Carolina Concrete's
 6 work, what did that include?
 7 A I don't really know for sure. I know it
 8 had something to do with chimneys and party walls or
 9 dividing walls between units on the fifth floor.
 10 Q So it was the chimneys and the fifth
 11 floor party walls only?
 12 A I don't know. I know that was included.
 13 I don't know --
 14 Q -- what else?
 15 A Huh-uh.
 16 Q Are the party walls and privacy walls
 17 different?
 18 A No. It's just terminology.
 19 Q In the buildings if you're on the decks,
 20 there is a wall -- the full-height wall and then a
 21 smaller wall. And I think the full-height wall is
 22 adjacent to the living space of the unit next door.
 23 Is that right?
 24 A Yes.
 25 Q And then there's a smaller wall that

1 '09-2010 time period?
 2 A No. I really don't know when it started.
 3 I don't know if any were done prior to when I came
 4 in 2005. I don't remember.
 5 Q On the fourth and fifth floors?
 6 A On the fourth and fifth floors. But from
 7 at least 2008 to 2010, I had some replaced.
 8 Q Have any of the living room sliding glass
 9 doors been replaced?
 10 A Yes.
 11 Q Do you know which ones?
 12 A No.
 13 Q Do you know how many?
 14 A No.
 15 Q Do you know when the first one was
 16 replaced or a time frame of when however many were
 17 replaced it began and ended?
 18 A When I came in 2005, I don't know if any
 19 on the fourth and fifth floors at any point have
 20 been replaced. I just don't know. I don't
 21 remember.
 22 But my records would indicate that I
 23 continued to replace sliding glass doors. We did
 24 all master bedrooms first, fourth and fifth -- well,
 25 fifth floor master bedrooms. All of those have been

1 extends to the end of the deck, I guess. Right?
 2 A (Witness nodded).
 3 Q And you can see over it to the next deck.
 4 Right?
 5 A Yes.
 6 Q Is the smaller wall what they call the
 7 privacy wall and the full-height wall the tenant
 8 separation wall? Do you know?
 9 A I don't know.
 10 Q And the master bedroom sliding glass
 11 doors are adjacent to the tenant separation wall?
 12 Does that make sense?
 13 A Well, there would be a wall on each side.
 14 I mean, I can't really picture it.
 15 Q When you walk out on the decks, don't you
 16 go -- Like you go through the living room and
 17 there's a door on the side that goes into the deck,
 18 and there's a deck area, and to your left would be
 19 the master bedroom, and then there's a wall that's
 20 adjacent to the --
 21 A No. We're talking about the fourth and
 22 fifth floor townhouses?
 23 Q I'm talking about one through three, I
 24 think.
 25 A Oh, one through three? Yes, you are

1 oceanfront. What did First Exteriors do on the
 2 oceanfront side?
 3 A A and B.
 4 Q Just A and B?
 5 A Correct.
 6 Q Nothing on C and D?
 7 A No.
 8 Q On the ocean side?
 9 A Correct.
 10 Q How about on the street side?
 11 A No.
 12 Q Nothing on the street side?
 13 A Nothing had been done.
 14 Q How about the elevator towers?
 15 A I believe all of the elevator towers were
 16 done, but I don't know -- I was not there, so I
 17 don't know what.
 18 Q So it's true that there's oceanfront
 19 stucco on C and D currently?
 20 A Correct.
 21 Q It's synthetic stucco?
 22 A Correct.
 23 Q It's been there since day one?
 24 A Yes.
 25 Q Who did you-all hire to do the work

Janice Ohlendorf Darby, RPR
 (843) 814-7666 jodarby@comcast.net

1 Do you know what was involved with the
2 glazing of all bay windows in March of 2000?

3 A I do not.

4 Q Do you know if the work was done?

5 A I do not.

6 (Exhibit No. 15 marked for
7 identification.)

8 BY MR. ELLIOTT:

9 Q No. 15 looks like a report from Terry
10 McKelvey to Gloria May who was the manager in that
11 time period regarding B-414/415 chimney/roof
12 remediation field report. Take a look at that.

13 McKelvey indicates at the top he is
14 making a site visit to meet with Watertight Systems,
15 the company that's performing the prototype
16 remediation to the chimneys and roofs due to the
17 deficiently installed flashing. Do you know
18 anything about the work that Watertight is doing
19 during this time period?

20 A I do not.

21 Q Do you know if these chimneys and roofs
22 are the same chimneys and roofs that Carolina
23 Concrete Services worked on I think sometime later
24 in 2002?

25 A I think they were actually brought in

1 have done post-Hugo, right, based on what we've seen
2 so far?

3 A I believe so, yes.

4 Q And new flashing shall be installed in
5 accordance with good practices. Do you know if
6 Watertight attempted to do that work?

7 A I do not know.

8 Q And he goes on to talk about new chimney
9 caps should be incorporated into the remediation to
10 provide protection for the chimney. It sounds like
11 you don't know whether or not Watertight did that or
12 someone after them in the form of Carolina Concrete?

13 A It seems like Watertight was hired to do
14 like a mockup or something and they only did that
15 and no more. Carolina Concrete took over, is what I
16 believe.

17 Q And I know we're stretching, but do you
18 know if Carolina Concrete was to follow the mockup
19 or the go-by done by Watertight?

20 A I don't know.

21 Q And overseen by McKelvey?

22 A I do not know.

23 (Exhibit No. 16 marked for
24 identification.)

25 BY MR. ELLIOTT:

1 during this time for their opinion and they were
2 hired.

3 Q They were brought in to review the work
4 of Watertight and provide an opinion as to how to
5 fix the problems?

6 A I don't know why they were brought in
7 with Watertight. I just know that they kept finding
8 more water intrusion, so they brought in Carolina
9 Concrete.

10 Q Look at the next page, recommendations
11 from McKelvey. No. 1 he says, "Due to the chimney
12 sheathing deterioration from water intrusion, the
13 EIFS cladding and sheathing will have to be removed.
14 New sheathing and cladding should be installed."

15 Was Watertight, do you know, retained to
16 do that work initially and then Carolina brought in
17 afterwards?

18 A I don't really understand how the two
19 worked together. I just know Carolina Concrete
20 replaced Watertight.

21 Q And did work on all chimneys. Right?

22 A I believe so, yes.

23 Q No. 2 is the flashing installed by
24 Cyclone Roofing will have to be removed and
25 replaced. So this is flashing that Cyclone would

1 Q Exhibit No. 16 is an Exterior Condition
2 Survey from Terry McKelvey Bates stamped Plaintiff's
3 1 through 104. It's dated October 7, '02. Have you
4 ever seen that?

5 A I'm aware of it. I never looked at it.

6 Q It's still before your time?

7 A Yes.

8 Q Do you know if it was a basis for the
9 contract that was ultimately entered into by
10 Carolina Concrete Services?

11 A I do not know.

12 Q Look at Plaintiff's 19, Windows and
13 Sliding Glass Door Units. Are you with me?

14 A Yes.

15 Q On that Bates stamped page it says, "Bay
16 windows, horizontal sliding, fixed and sliding glass
17 door units have on numerous site visits been
18 examined. They have been examined for, but not
19 limited to, the following: Water leakage to the
20 interior, insulated glass seal breakage, mold growth
21 adjacent to unit, stains on the wall/wallpaper,
22 stains on ceilings, wet carpet, rust stains,
23 deteriorated wood base trim and howling due to
24 wind."

25 Were you aware that Shipwatch was having

1 Right?

2 A Yes.

3 Q But we still don't know what work was
4 being done, if it's replacing stucco on all the
5 floors or replacing stucco on just fourth and fifth
6 or something different. You can't shed any light on
7 that right now?

8 A I can only say my understanding is the
9 fourth and fifth floors ocean side were done and the
10 fifth floor street side and the end walls.

11 Q In the '02, '03 time period?

12 A Right.

13 Q Back to the sliding glass doors and fixed
14 windows, do we know if they were replaced then?

15 A To me, that was the time period that that
16 work was done as well.

17 Q Though it doesn't mention that in our
18 little outline here?

19 A Yeah, this was 2003. That was probably
20 2004, because it was finished when I came in 2005.

21 Q What was finished?

22 A Sliding glass doors, master bedroom,
23 first, second and third floor were completed.

24 Q On the page 6415 where we --

25 A I don't have 15.

1 A Yes. One of them would request or call
2 in about something they had a problem with or
3 something they needed me to look at; or when it
4 rains, you know, we had problems with leaking
5 sliding glass doors. So we would go in after a
6 heavy rain looking for wet carpet, any sign of
7 water.

8 Q How long has it been a problem with
9 leaking sliding glass doors at Shipwatch?

10 A Well, I've been there -- this is my ninth
11 year. So there's been problems since I've been
12 there.

13 Q And you started when?

14 A February 2005, I think.

15 Q What kind of problems have you noticed
16 with the leaking sliding glass doors since February
17 of 2005?

18 A They leak.

19 Q Anybody ever told you why they leak?

20 A We've had contractors out there that
21 look. Sometimes they say it was no end dams.
22 Sometimes it was installation. They kind of each
23 had their own opinion.

24 Q What contractors gave you those comments?

25 A Carolina Concrete and Charleston Glass.

1 Q Any place other than sliding glass doors?

2 A Fourth floor units are townhouses. So
3 they incorporate the fourth and the fifth floors.
4 And there will be water penetration in the fourth
5 floor bedroom street side, which is right below the
6 fifth floor sliding glass door. That's how we would
7 be able to find a leaking sliding glass door on the
8 fifth floor.

9 Q How long have you had the problem with
10 the leaking fifth floor sliding glass doors?

11 A We've had leaking problems since I came
12 in 2005.

13 Q Any other places where the homeowners
14 have complained about water intrusion?

15 A Not that I can think of.

16 Q Have any of the homeowners complained
17 about roof leaks?

18 A I think we had a couple of -- I remember
19 having Carolina Concrete come out and make some
20 repairs -- they had to make some repairs to roof
21 drains. I don't remember -- I know they had to cut
22 into the ceilings of some of the townhouses to make
23 the repair. I don't remember if there was a leak
24 inside -- I don't remember why we had to do that,
25 but they had to make some repairs to roof drains.

1 caused a bay window in C213 to leak. Correct?

2 A 213, that's correct. That's what it
3 says.

4 Q How often were the bay windows leaking in
5 2007?

6 A I have no idea.

7 Q How many bay windows are there in each
8 building?

9 A Six in each building.

10 Q So 24 total?

11 A Correct.

12 Q And so in 2007 we know of reports of four
13 of the 24 were leaking. Correct?

14 A Correct.

15 Q Do you recall any repairs being done to
16 address the leaking bay windows in 2007?

17 A I don't recall specifically, but I know
18 that Bob Wiggins came out, and I know that
19 Charleston Glass also did some caulking around the
20 bay windows. But I don't remember anything
21 specific.

22 (Exhibit No. 101 marked for
23 identification.)

24 BY MR. COBB:

25 Q I'm going to hand you Exhibit No. 101

1 have recommended what he recommended.

2 Q I want to make sure I'm clear. In
3 September of 2008 you recommended to the board that
4 the board enter into the \$1.8 million contract with
5 Carolina Concrete Systems to replace the EIFS off of
6 the four buildings at Shipwatch. Correct?

7 A I don't believe I recommended that they
8 enter into a contract with anyone. I recommended
9 that they do the work that had been recommended that
10 they do for the protection of the buildings.

11 Q Let me rephrase. In September of 2008
12 did you recommend to the board that it spend
13 approximately \$423,060 per building which can be
14 done in phases totaling \$1,800,000 for EIFS
15 replacement of the buildings at Shipwatch?

16 A Apparently, I recommended whatever it
17 says in here that I recommended. But did I stand up
18 and say I recommend that you sign a contract with
19 someone for this amount of money? No, that's not my
20 place. My place is to do research to know what the
21 buildings need to get the prices, get the
22 information and lay it out for them. And, yes, I
23 recommend that you do what is appropriate for the
24 buildings. But I don't recommend that they sign a
25 contract for a million dollars. That's not my

1 place.

2 Q My question to you -- the last question I
3 asked you did not involve you recommending that they
4 contract with anyone.

5 My question to you was, the September
6 2008 minutes indicate that you "highly recommended"
7 item No. 6 of the September 2008 budget meetings.
8 Correct?

9 A That's what it says, yes.

10 Q Item No. 6 is titled, "EIFS replacement,
11 approximately \$423,060 per building which can be
12 done in phases totaling \$1,800,000."

13 A That's what it says, yes, correct.

14 Q And that work would have involved the
15 complete removal and replacement of all the EIFS on
16 the four buildings at Shipwatch. Correct?

17 A All that had not already been replaced,
18 yes.

19 Q And do you recall making that
20 recommendation to the Shipwatch board that they have
21 that work done beginning in 2008?

22 A I can't say that I specifically remember
23 it, but I'm sure that I would. And it says here
24 that I did.

25 Q At any point in time after you reviewed

1 the September 2008 minutes did you ever go to anyone
2 on the board and say you have misquoted me,
3 mischaracterized what I said or did?

4 A No.

5 Q And so anybody who is objectively looking
6 at the September 2008 minutes can take these minutes
7 to mean that you in fact did --

8 A Yes, they can.

9 Q In 2008?

10 A Yes, they can.

11 Q That the Shipwatch board completely
12 remove and replace all the existing EIFS on the four
13 buildings. Correct?

14 A Sure.

15 Q And you would agree with me that there
16 was a recognition by the board in 2008 that the
17 three items you listed as "highly recommended" which
18 in their entirety would have totaled over \$2 million
19 were things that were either, quote, ongoing or had
20 been held back from previous years?

21 A What was the question? The board -- What
22 was it? The board what?

23 Q There is a recognition, is there not, in
24 these September 2008 minutes by the board that you
25 had recommended \$2.1 million worth of repairs --

1 A It says here, yes. The secretary is in
2 the minutes, so yes. I guess that would say that
3 the board is acknowledging that I recommended that
4 they get the EIFS off the building and replace it,
5 yes.

6 Q Not only that, but dealing with the deck
7 coatings and the sliding glass doors. Correct?

8 A Yes.

9 Q And the board recognized in September of
10 2008 that those three items were either as the
11 minutes reflect, quote, ongoing or had been held
12 back from previous years. Correct?

13 A Yes, that's what it says.

14 Q On the last page of the September 2008
15 minutes there is a note that you told the board in
16 September of 2008 that when Shipwatch opened up the
17 EIFS before, there were problems, and that you
18 notified the board additional problems may arise
19 when opening up the new areas of EIFS, meaning that
20 the costs may be more than expected. Correct?

21 A It says that, but I don't remember that.

22 Q Do you have any reason to dispute the
23 accuracy of these minutes?

24 A No.

25 Q Let me go back to page 3 of these

1 time I turned around, they were coming, wanting a
2 broken handle replaced or the rollers making the
3 door hard to open. They never cleaned out the sand
4 out of the tracks. And then you yank on the thing,
5 and eventually the handle breaks.

6 So I brought it to the attention of the
7 board, and they determined that maintenance --
8 cleaning and maintenance items on the interior was
9 the owner's responsibility. So I have not since
10 that time replaced a handle or rollers on a sliding
11 glass door.

12 Q On page 5 of the September 2008 minutes
13 it reflects yet another bay window that's leaking.
14 Correct? This time at unit D219 caused by the
15 installation of window treatments.

16 A I think this is the same one we talked
17 about before, D219. And that's where they had
18 screwed into the framework and it caused damage
19 below in D119. It was No. 106.

20 Q Let me go back to page 7 of the September
21 2008 minutes. Under the asterisk there at the
22 middle of the page it says, "The board previously
23 passed on the coating of the decks because we needed
24 to have money to do other projects (namely the
25 beach) and let the warranty expire." What is the

STATE OF SOUTH CAROLINA

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

THE CONTINUATION OF THE DEPOSITION OF LINDA JERNIGAN was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Thursday, the 17th day of July 2014, at the offices of Turner Padgett, 40 Calhoun Street, Suite 200, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

A P P E A R A N C E S

For the Plaintiff:

ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. CHRISTOPHER RAMSEY

For the Defendants:

RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MR. JAMES ELLIOTT

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MS. DANIELLE B. WEGENER

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. DAVID S. COBB
MS. JENNIE SMITH.

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. STACEY CANADAY (by phone)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

A P P E A R A N C E S (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MR. MICHAEL BARFIELD

RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street, Suite 220
Charleston, SC 29401
BY: MS. SAMIA H. NETTLES

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. R. BRITTON KELLY

KERNODLE ROOT & COLEMAN
Attorneys at Law
P.O. Box 13897
Charleston, SC 29422
BY: MR. DAVID A. ROOT

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL EARHART

Reported by:
MS. JANICE O. DARBY
(843) 814-7666

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 A Correct.

2 (Exhibit No. 126 marked for
3 identification.)

4 BY MR. COBB:

5 Q I'm going to hand you what I've marked as
6 Exhibit 126, Bates stamp PL 006986, 87 and 88, three
7 pages titled Shipwatch Budget Proposal 2008. Can
8 you just explain to me what this document shows?

9 A This is a worksheet that I create for the
10 board with the budget proposal for any particular
11 year. This one 2008. And as a comparison, I show
12 them what we budgeted the year before, 2007. And
13 because the year is not over, I do a projected
14 actual total.

15 MR. COBB: Let me take a quick
16 break, because I think my hour is up. The only
17 thing I want to put on the record is we have not
18 completed the review of the documents that have just
19 recently been provided, so we reserve our right to
20 at some point -- and we can schedule it with
21 everybody -- to bring you back for more questioning.

22 (Recess taken.)

23 EXAMINATION

24 BY MR. KELLY:

25 Q Ms. Jernigan, my name is Britt Kelly. I

1 line. Who are those folks? Not their names, but
2 what is their significance as it relates to
3 Shipwatch?

4 A They were the board members at that time.

5 Q I see in the subject line it says,
6 "Addendum to Manager's Report 3.5." Tell me about
7 manager's reports. What are those?

8 A Usually prior to a board meeting I just
9 write up a report of things that have been going on
10 at the property, things that I have done, work
11 that's been accomplished. Sometimes I do them more
12 often, but usually just before a board meeting.

13 Q So obviously this goes to the board and
14 not to the membership at large?

15 A Correct.

16 Q Why 3.5?

17 A When I put together the board meeting
18 package, everything has to be numbered. And this
19 just happens to be on the agenda -- the manager's
20 section is No. 3, and anything that I have for them
21 is numbered with a three something.

22 Q And on Exhibit 127, is the discussion
23 taking place here about the work that will
24 eventually be done in the fall of 2010?

25 A Yes, I believe so.

1 represent EFCO and W.C. Johnston Architects in this
2 case.

3 I'll remind you during the deposition, if
4 you would, please let me finish my question before
5 you begin to respond, even if you know where I'm
6 going with my question. Is that okay?

7 A Yes.

8 Q I want to kind of focus my questioning
9 for the time being on the 2010 time period. I know
10 there were some repairs or some renovation work done
11 by Carolina Concrete in the fall of that year. I
12 kind of want to understand how those repairs came to
13 be, how the board made the decision to go forward
14 with those.

15 (Exhibit No. 127 marked for
16 identification.)

17 BY MR. KELLY:

18 Q I want to mark as Exhibit 127 an e-mail
19 dated March 2, 2010, Bates labeled PL 028295. Take
20 a minute to look at it and tell me if you recognize
21 it.

22 A Okay.

23 Q Is that an e-mail from you?

24 A Yes, it is.

25 Q And I see a bunch of names in the "To"

1 Q How did the board decide to do the
2 stationary window replacement work and the
3 additional work that was going to be done in the
4 fall of 2010?

5 A How did they determine?

6 Q What led them to choose to do that work?

7 A Well, we had leaking sliding glass doors
8 in some areas. It was a continuation of work that
9 had already been accomplished by Carolina Concrete
10 and others. They had already done the end walls of
11 all four buildings. They had already done the
12 fourth and fifth floors, I believe, of all four
13 buildings, at least parts of those two floors. And
14 this was going to be a continuation of it.

15 They had also done the ocean-side master
16 bedrooms on first, second and third floor. So this
17 was just considered a continuation of all the other
18 projects.

19 Q And on the second page of Exhibit 127,
20 first full paragraph, it indicates that a
21 conversation took place with you and Sutton-Kennerly
22 about the costs of designing a remediation and
23 putting together a scope of work for that work to be
24 done in the fall of 2010?

25 A Yes.

1 Q It looks like you're relating to the
2 board that Fred and Carl did not feel that an
3 engineer is needed for that work. Is that correct?

4 A Correct.

5 Q What do you recall about your
6 conversations with Fred and Carl about the lack of a
7 need for an engineer to scope the work to be done in
8 the fall of 2010?

9 A Well, in the previous projects that I had
10 just mentioned, Bob Sisnroy had been the engineer.
11 And Bob Wiggins, Carolina Concrete, had been the
12 general contractor. So they were using the same
13 product, which was EFCO doors, the same wall system,
14 which was Durock, so they just felt like Bob Wiggins
15 knew what he was doing. It was just a repeat, a
16 continuation. So they didn't see the need for
17 someone coming in cold and getting involved.

18 Q Am I correct from your e-mail here,
19 Exhibit 127, that paragraph, that Fred and Carl and
20 the board did not want to incur the cost of an
21 engineer to do that work?

22 A Correct.

23 Q And the work was more expansive than the
24 sliding glass door and the Durock work. Right?

25 A In 2010?

1 they were changing out the synthetic stucco on the
2 outside.

3 Q And the synthetic stucco replacement work
4 that they wanted to take place in 2010, was that
5 limited to a certain number of buildings, or was it
6 for all the buildings?

7 A It was going to be just two buildings, A
8 and B.

9 Q So the stationary windows, the first and
10 third floors, would have been for buildings A and B?

11 A Correct.

12 Q And there are 36 in each building? Is
13 that what you told us on Tuesday?

14 A There are -- Oh, the number of windows?
15 Yes.

16 Q You indicate on Exhibit 127 in that third
17 paragraph that you estimate a price for the new
18 windows and concrete curbs?

19 A Yes.

20 Q How did you estimate that?

21 A I don't really remember for sure, but I
22 know that the sliding glass doors, I think, were
23 estimated at \$11,000 each. So I'm sure I just was
24 getting this information from Bob Wiggins in
25 proposals or just in estimates.

1 Q Yes, ma'am.

2 A No, I don't think so.

3 Q If we look at the first page of Exhibit
4 127, it's talking about replacing stationary windows
5 on the first through third floors of the buildings.
6 Right?

7 A Oh, right.

8 Q And none of that work had been done
9 previously at Shipwatch. Correct?

10 A No. Only sliding glass doors at that
11 time.

12 Q So no one had ever scoped -- By scope, I
13 mean no engineer sat down and prepared a scope of
14 work for the stationary windows to be replaced at
15 Shipwatch. Right?

16 A Not to my knowledge.

17 Q Why was the board interested in replacing
18 those stationary windows at Shipwatch?

19 A I believe it was a recommendation by Bob
20 Wiggins because those -- like the sliding glass
21 doors, those stationary windows were sitting
22 directly on the concrete. And I guess at their age
23 they were reaching their usefulness and would have
24 to be repaired or replaced sometime in the near
25 future. So it was just more feasible to do it while

1 Q The first paragraph of this Exhibit 127
2 reads, "I met with Carl Grisier and Fred Trombino
3 who act as our building consultants." Do you see
4 that?

5 A Yes.

6 Q What did you mean that Carl Grisier and
7 Fred Trombino act as building consultants?

8 A Well, it probably wasn't a wise choice of
9 words, but -- Let's see. Were they on the board? I
10 guess neither one of them were actually on the board
11 at that time, but they both lived there, and so they
12 were on site. Carl Grisier had been there -- Well,
13 they had both been there for the end wall work that
14 was done. So because they lived there, they are
15 just there to give guidance and support and they
16 stay involved.

17 Q The board of directors that's listed here
18 in Exhibit 127, were they all out-of-town owners?

19 A Rick Fain, B412, is actually a local,
20 Mt. Pleasant. The rest of them are all out of town
21 or out of state.

22 Q During 2010, did Mr. Fain have any
23 involvement during the building repair and
24 renovation work?

25 A Only as a board member.

1 Q Did the board in 2010 appoint or
2 designate Carl Grisier and/or Fred Trombino to serve
3 in a building repair oversight capacity?

4 A No, I don't believe so. I don't remember
5 specifically that they were assigned to it.

6 Q They were just interested in it?

7 A Well, you know, all the owners are
8 interested. So if they are around, they are out
9 there looking. But I don't remember them having
10 specific roles to inspect or anything like that.

11 Q Do you recall in the 2010 time frame
12 whether Mr. Trombino or Mr. Grisier were reporting
13 back to the board as to their findings or their
14 opinions concerning either the work of the repair
15 contractors or their proposals?

16 A I don't remember that they did.

17 Q When did Mr. Trombino come on to the
18 board?

19 A I don't know. Perhaps it was -- You can
20 only serve on the board two terms. And I think he
21 went -- must have been on the board prior to this.
22 I am honestly not sure the years that he was on.

23 Q Do you remember if he came on to the
24 board at some point after March 2, 2010?

25 A Yes, he did. You can serve two

1 three-year terms, and then you have to be off for at
2 least a year, and then you can be reelected. And so
3 he is serving for the second time now.

4 Q Do you know how many years are left on
5 his term?

6 A This is it. He'll be complete -- At the
7 annual meeting in January of 2015, they will elect
8 new board members.

9 Q Does it seem right that he was out in
10 2010 and back on in 2011?

11 A I honestly don't remember.

12 Q I think I'm finished with that one for
13 the time being.

14 What do you remember about the regime
15 hiring Gary Freeman?

16 A I don't -- I think it was kind of
17 instigated by me. I felt that we needed some kind
18 of expert guidance through the process of the work
19 being done. And so I did some research on different
20 local architects or engineers, and this was just
21 someone that -- actually, Bob Wiggins gave me the
22 name of and we met with. I don't know. Out of two
23 or three we talked to, we chose him to guide us
24 through that phase of the remediation project.

25 (Exhibit No. 128 marked for

1 identification.)

2 BY MR. KELLY:

3 Q Let me give you what I've marked as
4 Exhibit 128. It appears to be a letter from
5 Mr. Freeman dated September 22, 2010, addressed to
6 you as the general manager at Shipwatch.

7 A Yes.

8 Q Do you recall this letter?

9 A Well, not this letter specifically, but I
10 do know that I had correspondence with Mr. Freeman.

11 Q And in the first paragraph of Exhibit 128
12 Mr. Freeman indicates that he is offering services
13 to you as an architect to provide limited
14 construction administration duties during the
15 project. Do you see that?

16 A Yes.

17 Q Is that your understanding of what
18 Mr. Freeman is being hired to do at Shipwatch?

19 A Yes.

20 Q Was the project in question the Carolina
21 Concrete repair and renovation work of the EIFS
22 replacement and the addition of the 72 stationary
23 windows?

24 A I'm sorry?

25 Q Was the project that he's referencing

1 here in Exhibit 128 the work that Carolina Concrete
2 was going to do to replace 72 stationary windows,
3 add some sliding glass doors and replace the EIFS?

4 A Yes.

5 Q This letter is dated September 22, 2010.
6 I assume it's fair for me to believe that the work
7 had not been done yet at this point?

8 A I would assume so. I don't remember the
9 specific date that the work started.

10 Q Who served as the regime's point person
11 during the repairs for communicating with
12 Mr. Freeman?

13 A I guess it would be me.

14 Q Who served as the regime's point person
15 during the repairs for interacting with Bob Wiggins?

16 A It would be me.

17 Q Did you also deal with the subcontractors
18 for Mr. Wiggins, or simply Mr. Wiggins?

19 A I was familiar with all of them, but my
20 direction would be with Bob Wiggins.

21 Q If it's part of Mr. Freeman's
22 responsibility for limited construction
23 administration duties during the project, if he
24 would raise a concern with you, how are those
25 concerns addressed?

1 A He would send me a letter, and I would
 2 share it with the board.
 3 Q How would you share it with the board?
 4 A Through e-mail.
 5 Q During the project in the fall of 2010
 6 being done by Carolina Concrete, Gary Freeman told
 7 you that the EFCO windows being supplied did not
 8 contain impact glass, didn't he?
 9 A I honestly don't remember conversations
 10 specifically. I would have to look at his records.
 11 But I'm sure if they are in the records that he did.
 12 (Exhibit No. 129 marked for
 13 identification.)
 14 BY MR. KELLY:
 15 Q I'm going to mark as Exhibit 129 this
 16 e-mail. Take a minute to review it, and then I'm
 17 going to ask you if you recognize it.
 18 A I don't understand this, but I do recall.
 19 Q Exhibit 129 appears to be an e-mail from
 20 Gary Freeman to Bob Wiggins where you were copied
 21 dated November 3, 2010. Is that correct?
 22 A Yes.
 23 Q Do you recall receiving this e-mail?
 24 A Not specifically, no. But I do recall
 25 the Mr. Broadway. That's what rings a bell with me.

1 I think he was an engineer that did a report to
 2 answer these questions. I remember that. I don't
 3 understand the language here, but I do recall that
 4 he did some kind of special report for Charleston
 5 Glass.
 6 Q The bottom right-hand corner of Exhibit
 7 129 has a stamp on it. Do you see that PL 022008?
 8 A Yes.
 9 Q That indicates that it came from the
 10 files produced by Pat Flynn's office. I'll just
 11 tell you that this came from the e-mails that we
 12 received last week. The CC line, Linda Jernigan,
 13 says iopship@bellsouth.net. Is that your e-mail
 14 account?
 15 A Yes, it is.
 16 Q Do you have any reason to dispute whether
 17 you received this?
 18 A Oh, not at all, no.
 19 Q On this date, November 3, 2010,
 20 Mr. Freeman tells you that the windows probably need
 21 to be impact rated. Correct?
 22 MR. RAMSEY: Object to the form.
 23 A He was raising the question, yes.
 24 BY MR. KELLY:
 25 Q Well, on the fourth paragraph of Exhibit

1 129 doesn't he relay a conversation to you with
 2 Brian Pietras where he was told that they probably
 3 need to be impact rated?
 4 A Yes. I think that's the reason for --
 5 the whole reason for this e-mail.
 6 Q In item No. 4 in the bottom of Exhibit
 7 129 he's asking the question, "Are the windows
 8 impact rated? Is it required?" Correct?
 9 A Yes.
 10 (Exhibit Nos. 130 and 131
 11 marked for identification.)
 12 BY MR. KELLY:
 13 Q Have you had time to review Exhibit 130?
 14 A Yes.
 15 Q Do you recognize it as an e-mail from
 16 Gary Freeman to Bob Wiggins where you're copied
 17 dated November 5, 2010, about these windows?
 18 A Yes.
 19 Q Am I correct that on November 5, 2010,
 20 Mr. Freeman is asking for a meeting with you and
 21 Randy Morgan and Bob Wiggins?
 22 A Yes.
 23 Q And he asks the question again is impact
 24 glazing required for the windows being installed as
 25 part of Carolina Concrete's scope of work in 2010?

1 A Yes.
 2 Q He also says at the bottom, correct, that
 3 the questions about impact glazing also relate to
 4 the slider doors that are to be installed?
 5 A Yes.
 6 Q Exhibit 131 is another one of these
 7 e-mails that I was able to locate on either Monday
 8 or Tuesday through the review of the e-mails that
 9 were produced from your files. And the only reason
 10 I marked it is it indicated that on November 8th you
 11 forwarded this e-mail that we marked as Exhibit 130
 12 to Fred Trombino.
 13 A Yes.
 14 Q It's my understanding that he was not on
 15 the board at that time. Correct?
 16 A I don't really know.
 17 Q Well, we looked at that March 2010
 18 e-mail. He was not on it then. Right?
 19 A That's correct.
 20 Q And when do the board elections normally
 21 take place?
 22 A In January.
 23 Q So is it fair to assume that he was not
 24 on the board as of November 8, 2010?
 25 A Yes, it would.

1 Q Why was Mr. Trombino receiving a copy of
2 this e-mail?

3 A Well, there was another e-mail back here
4 that you had that said that we were using Fred
5 Trombino and Carl Grisier as building consultants.
6 Bad choice of words, but there it is.

7 Q Were they, for lack of a better term, the
8 intermediary for you and the board for these
9 building issues?

10 A I guess that would be a good way to put
11 it. They were owners. I am not. So they would
12 talk to the board in more of a position than I would
13 be in. But it also was just to support me in trying
14 to get the work done.

15 Q I wasn't able to find any e-mails where
16 you forwarded these communications to anyone else at
17 the regime including any board members. Do you know
18 whether you did or did not?

19 A I don't know that I did or did not. If
20 they weren't in there, I probably didn't. I don't
21 really know.

22 Q Do you e-mail Mr. Trombino when every
23 issue comes up on the project?

24 A No.

25 Q What was so significant about this issue

1 that you felt you needed to e-mail it to
2 Mr. Trombino?

3 A Well, it was raising questions that I had
4 no clue about. They were raising issues that were
5 part of a continuation of another project when I was
6 not there, and I did not know what to do. So I was
7 seeking some support.

8 Q Did you attend a meeting with Randy
9 Morgan and Bob Wiggins and Gary Freeman about this
10 issue?

11 A I honestly don't remember. In a way, it
12 seems like we might have. But I just don't really
13 specifically remember.

14 I know Mr. Freeman, his parents were in
15 another state and they were in ill health and he
16 made several trips away during that time. So a lot
17 of what we were doing was on the phone. But yet it
18 just seems like maybe we did have this meeting when
19 Randy Morgan presented the drawing or whatever it
20 was from the other engineer.

21 Q Jason Broadway?

22 A Broadway, yes.

23 Q Do you recall any of your
24 conversations -- Let me back up. Did you have
25 conversations with Mr. Trombino about these

1 e-mails?

2 A I don't remember it. I don't remember
3 sending the e-mail either. It's just too far back,
4 too many things.

5 (Exhibit No. 132 marked for
6 identification.)

7 BY MR. KELLY:

8 Q Exhibit 132 appears to be a fax from
9 Randy Morgan with Charleston Glass on November 11,
10 2010, to Bob Wiggins. If you would take a minute to
11 read that, please.

12 A Okay.

13 Q The meeting Mr. Freeman had proposed was
14 going to be on Wednesday afternoon, November 10th.
15 And this document is dated November 11th. I'll tell
16 you that I didn't attach it, but attached to this
17 fax was a copy of the report from Jason Broadway.

18 Have you ever seen this document before
19 that we marked as Exhibit 132?

20 A I don't recall seeing it, but I am sure I
21 would have.

22 Q Why do you believe you would have seen
23 that document?

24 A Well, it's all based on that information
25 about the project, so I would assume I saw it at

1 some point.

2 Q In Exhibit 132, Mr. Morgan states that
3 the sliding glass door replacement work his company
4 did over the past several years was done at the
5 Shipwatch buildings in accordance with the 1997
6 Standard Building Code. Do you see that?

7 A I see that.

8 Q He also says that the 72 fixed windows
9 were installed during this 2010 replacement work
10 based on the 1997 Standard Building Code, contracts,
11 proposals and conversations. Do you see that?

12 A Yes, I do.

13 Q Were you part of any conversations with
14 Mr. Morgan or Mr. Wiggins about which building code
15 the regime expected their work to be performed
16 under?

17 MR. RAMSEY: Object to the form.

18 A I don't recall anything, other than I do
19 remember the Broadway report. As far as
20 conversations, I honestly don't remember whether I
21 did or not.

22 BY MR. KELLY:

23 Q What do you remember about the Broadway
24 report?

25 A That it played a big role in this. I

1 think the project was well in hand, if not
2 completed, almost completed by the time the report
3 came in. And that everyone felt -- everyone, Bob
4 Wiggins, Randy Morgan -- were confident that it was
5 sufficient to continue on.

6 Q The Jason Broadway report concerns the
7 design pressure rating. Do you know that?

8 A I know that it was a scientific type
9 thing that made everybody -- Bob Wiggins, Randy
10 Morgan -- confident that they met everything that
11 they needed to meet.

12 Q If you look back at Exhibit 131 and you
13 look down in Mr. Freeman's list, do you see in No. 2
14 he asks about the required design pressure rating?

15 A Mm-hmm. Yes.

16 Q And then in No. 4 he asks about impact
17 glazing?

18 A Yes.

19 Q Did you understand that impact glazing
20 and design pressure ratings were two different
21 things?

22 A I don't think that I truly understood
23 that at the time.

24 Q Were you part of any conversations with
25 Mr. Wiggins, Mr. Morgan or Mr. Freeman as to which

1 Q You said Mr. Wiggins told you that this
2 project in the fall of 2010 was a continuation of
3 previous projects which called for work to be done
4 in the same way. Did I understand that correctly?

5 A The end walls and the sliding glass doors
6 for the master bedrooms, one, two and three floors.

7 Q What about the stationary windows on
8 floors one, two and three of buildings A and B?

9 A Well, that was a new part of the project,
10 continuation project.

11 Q What significance did you take from his
12 comment that this was a continuation of an ongoing
13 project?

14 A Well, Shipwatch had always had complete
15 trust and faith in Bob Wiggins. So if he was
16 confident and comfortable, then so were we.

17 Q Did you understand at that time that
18 building code changes had taken place in Isle of
19 Palms?

20 A I was not familiar with that, but that's
21 what I was understanding. And that's why I think
22 they continued to say that the design had been for
23 the 1997 building code and this is a continuation.

24 Q So you were told that this work, for lack
25 of a better term, would be grandfathered in under

1 building code would apply to the work that they were
2 performing in the fall of 2010?

3 A I don't remember anything specific, other
4 than Bob Wiggins continually said that this was a --
5 this project was a continuation of the previous
6 project which called for it to be done the same way.
7 It was just a continuation. It was not a new
8 project in his eyes. I don't remember if it was at
9 this point in time or not, but I went to Bob
10 Sisnroy, called Bob Sisnroy, and asked him to
11 provide the documents showing the design of
12 everything and what he had recommended as the
13 original project, because it was being said that it
14 was a continuation, not new. And I was not there
15 before.

16 After quite some time he sent me an
17 e-mail which should be in here somewhere that said
18 that he was not able to find any of his design
19 drawings, and he sent me a bill for \$500 for
20 looking.

21 Q So without those documents, how did the
22 regime proceed?

23 A Well, I think that the project was
24 probably about completed, if not completed, at this
25 point.

1 the prior building code because it's a continuation
2 of the work?

3 A I don't remember the words "grandfathered
4 in" ever being used, but it was a continuation.
5 That's what they kept saying.

6 Q Was the impression you obtained from the
7 comments of Mr. Wiggins and those conversations lead
8 you to believe that the work was being done under a
9 prior building code because it was a continuation?

10 A That's the impression that I got.

11 Q Did you report that to the board?

12 A I'm sure I did.

13 Q Did anyone object to that?

14 A Not that I know of.

15 Q Again, Exhibit 132 is dated November 11,
16 2010.

17 A Yes.

18 Q Just for our frame of reference.
19 (Exhibit No. 133 marked for
20 identification.)

21 BY MR. KELLY:

22 Q Exhibit 133 is an e-mail from Gary
23 Freeman to you dated November 12, 2010. You're
24 welcome to read the entire e-mail, but I'm going to
25 ask you questions only about paragraphs one, two and

1 three.

2 A Okay. Go ahead.

3 Q On November 12, 2010, Gary Freeman told
4 you that the aluminum storefront and glazing system
5 that has been installed at the oceanfront window
6 openings of the first three floors of buildings A
7 and B does not meet the current building code
8 requirements of impact-resistant systems. Correct?

9 A Yes.

10 Q Did you have any questions as to what
11 that statement meant?

12 A No. I think I was probably in total
13 panic about that time, because the project was, I
14 believe, either in full swing or about finished. I
15 don't remember the time frame start to finish of the
16 project. But, once again, Bob Wiggins continued to
17 say to us and believe himself that it was a
18 continuation, so that everything was okay. And that
19 Gary Freeman -- or Gary Morgan of Charleston Glass
20 had provided something saying that we were good. We
21 had nothing else to go on. We believed them.

22 Q Has anyone suggested to you during the
23 course of this litigation that Mr. Wiggins' belief
24 was incorrect?

25 A I don't know.

1 conversations.

2 Q Have you had any conversations with the
3 Isle of Palms building officials as to whether or
4 not Mr. Wiggins' belief was correct in 2010?

5 A I have not had any conversations with the
6 building department of the Isle of Palms, but I do
7 know that Jeff Miller went to them and asked them if
8 we could be grandfathered in with the doors that
9 were already in place. And they said no, that we
10 had to replace them to impact glass because that's
11 what we should have done.

12 Q We are going to talk about all of that
13 here in a little while. So we'll table that for the
14 time being.

15 Exhibit No. 133, looking back at this
16 e-mail from Gary Freeman to you on November 12,
17 2010, in paragraph three Mr. Freeman tells you that
18 the windows in the first three floors must be impact
19 rated or otherwise the opening must have protection
20 such as shutters, plywood, et cetera. Correct?

21 A Correct.

22 Q Did you have any misunderstanding as to
23 what he was telling you there?

24 A No, I don't think so.

25 Q No. 3 in Exhibit 133, Mr. Freeman tells

1 Q Have you had any conversations with Jeff
2 Miller or Greg Isaacs or Mike Parker as to whether
3 or not their belief was incorrect?

4 A Oh, those, yes.

5 Q Tell me about those conversations.

6 A Well, they did a report for Shipwatch,
7 and in that report they stated that they should have
8 been impact glass and that they were not.

9 Q Tell me about that report. I don't think
10 I've ever seen that.

11 A Oh, I'm sure it's been provided. It was
12 an investigation report done in 2011, 2012.

13 Q I've seen a 2012 report of SKA which was
14 pretty comprehensive, but it doesn't talk about the
15 doors or windows not being impact-resistant glass.
16 Are you aware of any other report?

17 A No, not specifically.

18 Q Do you recall any conversations -- Tell
19 me about the conversations you've had with Jeff
20 Miller about whether Mr. Wiggins' belief as to his
21 work being done under the 1997 Standard Building
22 Code was proper or not.

23 A I don't know that I've had any specific
24 conversations with Jeff or Greg about Bob Wiggins
25 and his opinion. I honestly don't recall any

1 you on November 12, 2010, that Mr. Wiggins believes
2 the 1997 Standard Building Code to be in effect for
3 this work in 2010 and that the products that are
4 being installed could be non-impact rated. Is that
5 correct?

6 A That's what it says, yes.

7 Q Mr. Freeman goes on to tell you in that
8 November 12, 2010 e-mail that he disagrees with
9 Mr. Wiggins as to the applicability of that code.
10 Is that correct?

11 A That is correct.

12 Q After receiving this e-mail from
13 Mr. Freeman on November 12, 2010, what did you do
14 with it?

15 A I had asked Bob Wiggins, Carolina
16 Concrete, about a permit, because I needed to put a
17 permit in the window, and I continually asked him
18 for that permit. He said, well, he had it
19 somewhere. He had a lot of stuff on Shipwatch and
20 he would provide it and was never ever able to come
21 up with it.

22 Once again, by then the project was close
23 to completion, if not completed. So there really
24 wasn't much we could do.

25 Q You could require that he take the

1 windows out and replace them. Right?
 2 A Well, first, you have to have a
 3 replacement window to put in it. So that would have
 4 meant somebody had to design and somebody had to
 5 order and somebody had to pay for replacing what was
 6 already done. It's a little late to take much
 7 action.

8 Q So the 72 windows that had been installed
 9 were left in place. Correct?

10 A Yes.

11 Q And they were accepted by the board even
 12 though the board knew that the windows did not
 13 contain impact glass and that impact glass was
 14 required?

15 MR. RAMSEY: Object to the form.

16 A They were pretty ticked off.

17 BY MR. KELLY:

18 Q They didn't reject them. Right?

19 MR. RAMSEY: Object to the form.

20 BY MR. KELLY:

21 Q Did they reject the windows?

22 A No. They are still in place.

23 Q Is there any writing to anyone saying
 24 take these windows out of our building?

25 A I don't believe so.

1 Mr. Freeman. Is that right?

2 A Yes.

3 Q And in that e-mail on December 7, 2010,
 4 at 10:30 a.m. you told Mr. Freeman that the board
 5 considers the sliding doors regular maintenance.
 6 Correct?

7 A Yes.

8 Q And you also tell Mr. Freeman that the
 9 board chose the doors they wanted and approved the
 10 installation in 2002?

11 A That's what I said.

12 Q So in 2010 when Mr. Wiggins and
 13 Mr. Morgan were installing sliding glass doors at
 14 Shipwatch it was the board's desire that those doors
 15 conform to the doors that were installed back in
 16 2004. Correct?

17 A Yes.

18 Q Is that so that unit owners would have
 19 the same product?

20 A I guess.

21 Q And prior to this December 7, 2010 e-mail
 22 that we've marked as Exhibit 134, Mr. Freeman had
 23 suggested that the sliding glass doors did not
 24 contain impact glass and were required to have
 25 impact glass under the current building code. Is

1 Q Was there any contact made to EFCO as to
 2 whether or not they would provide a replacement
 3 product?

4 A Not by me.

5 Q During this same time period sliding
 6 glass doors were being replaced. Correct?

7 A Yes.

8 Q And the board at Shipwatch considered the
 9 sliding glass door replacement work to be regular
 10 maintenance. Correct?

11 A No, I don't think so. It's capital
 12 money. Apparently, we do.

13 (Exhibit No. 134 marked for
 14 identification.)

15 BY MR. KELLY:

16 Q In Exhibit 134 there are two e-mails, one
 17 from Gary Freeman to Bob Wiggins where you're copied
 18 on December 7, 2010, at 10:23 a.m. Correct?

19 A Yes.

20 Q And in that e-mail Mr. Freeman is asking
 21 questions about the slider doors, about their DP
 22 rating, about manufacturer's requirements and
 23 manufacturer's information. Is that correct?

24 A Yes.

25 Q And seven minutes later you respond to

1 that right?

2 A Yes.

3 Q I know on Tuesday and perhaps in your
 4 first day of deposition -- in fact, it may have only
 5 been the first day of your deposition -- you
 6 testified that some of the owners wanted to purchase
 7 sliding glass doors off the shelves, like at Lowe's?

8 A Yes.

9 Q Is it fair to say that the owners were
 10 concerned about the cost of the doors and thought
 11 they could get doors for less money than what the
 12 regime was having to pay?

13 A That's correct.

14 Q And was Tom Miller one of those people?

15 A Probably.

16 Q Is Tom Miller on the board?

17 A He is now, yes.

18 Q Was he in 2010?

19 A I don't know for sure. Yes, he was.

20 (Exhibit No. 135 marked for
 21 identification.)

22 BY MR. KELLY:

23 Q Exhibit 135 is another one of these
 24 e-mails I was able to get from the document
 25 production made on Monday. Do you see in the bottom

1 right-hand corner it says PL 033455?
 2 A Mm-hmm.
 3 Q And the bottom e-mail seems to be from
 4 you to Jim McDonough dated September 14, 2010. And
 5 I read Exhibit 135 to indicate that Tom Miller went
 6 to Randy Morgan's office at Charleston Glass to try
 7 to talk to him about obtaining a less-expensive
 8 sliding glass door.
 9 A Yes.
 10 Q And on September 14, 2010?
 11 A Correct.
 12 Q Tell me about that, please. What all do
 13 you remember?
 14 A I'm kind of remembering after reading
 15 this. He just believed that we were paying too much
 16 money for sliding glass doors, and he just wanted to
 17 talk to the provider or the contractor for that. He
 18 does that. He just has -- he likes to talk to
 19 people directly. So he does that sometimes.
 20 Q You seem concerned about it because you
 21 e-mailed Jim McDonough to see whether or not "we"
 22 were asking for an appointment with Randy Morgan?
 23 A Well, they were asking me if we wanted
 24 the appointment. Was it Shipwatch, or was it just
 25 an owner? That they didn't want to particularly

1 Q Do you remember that to be the case?
 2 A I know she brought it up several times.
 3 I do recall that.
 4 Q Other than Mr. Miller and Ms. Lehner,
 5 were other people on the board concerned about the
 6 cost of the sliding glass doors?
 7 A Well, everyone was concerned about the
 8 cost. They are very expensive. But the
 9 misunderstanding was the word "custom." When you
 10 say we have custom doors, they are thinking that
 11 they went in every unit and made a measurement of
 12 the hole and then built a door to fit that hole,
 13 which is not the case.
 14 The doors are custom, but they are most
 15 all of them the same size. The fourth and fifth
 16 floors are larger, but the first, second and third
 17 floors, those doors are all the same size but they
 18 are custom made. You could not go to Lowe's and get
 19 a door that size to fit.
 20 (Exhibit No. 137 marked for
 21 identification.)
 22 BY MR. KELLY:
 23 Q Ms. Jernigan, we're marking as Exhibit
 24 No. 137 another e-mail that came from these files
 25 produced on Monday marked PL 024987. This one is

1 talk to just anybody that came up. And so they
 2 wanted to know if we wanted them to provide him
 3 information, I guess. So I was just calling to
 4 confirm that Shipwatch -- He was going to be there
 5 representing Shipwatch, not just himself.
 6 Q Mr. Miller was not the only person
 7 concerned about the cost of those doors who served
 8 on the board. Correct?
 9 A Correct.
 10 Q Is it Audrey Lehner?
 11 A Lehner.
 12 (Exhibit No. 136 marked for
 13 identification.)
 14 BY MR. KELLY:
 15 Q Let me show you Exhibit 136. You can
 16 again read the whole thing. I'm mostly concerned
 17 about her e-mail, which is in the middle of the
 18 first page of Exhibit 136.
 19 A Okay.
 20 Q On this e-mail which is August 22, 2013,
 21 Ms. Lehner says that she has been on the board for
 22 12 years and had brought up the question as to the
 23 sliding glass door size and associated costs every
 24 year. Is that right?
 25 A Yes.

1 dated January 6, 2009. It seems to be an e-mail
 2 exchange between you and Colleen Moring.
 3 A Yes.
 4 Q Who is Colleen Moring?
 5 A She is an owner in a partnership that
 6 owns A402.
 7 Q On January 6, 2009, did you tell
 8 Ms. Moring that the board can only replace so many
 9 doors a year to keep regime expenses affordable?
 10 A Okay.
 11 Q I'm referencing the last line of the
 12 first paragraph on Exhibit 137.
 13 On January 6, 2009, did you tell
 14 Ms. Moring that the regime can only afford to
 15 replace so many doors a year to keep regime expenses
 16 affordable?
 17 A I don't think that's the essence of this
 18 e-mail exchange. She was asking about repairing
 19 work -- repairing stuff inside her unit, and I was
 20 saying that we were not going to make the interior
 21 repairs, but she would have a \$500 credit when her
 22 sliding glass doors were replaced to spend on
 23 interior repairs that were caused by the exchange of
 24 the door.
 25 Our bylaws say that as long as we are

1 attempting to make repairs, then we are not as an
2 association responsible for interior damage as long
3 as we are actively trying to stop the problem. And
4 that's what I was saying to her.

5 Q So why would you have referenced so many
6 doors in that sentence as to the regime expenses?

7 A Because that's how many sliding glass
8 doors we have. And if I went in and made repairs to
9 every door, her regime fee would be extremely high.
10 Because you have to remember -- and what I have to
11 constantly remind owners is -- there is no them and
12 us. They are the association. And every dollar I
13 spend, part of that dollar comes from their pocket.
14 So if everything was done for everyone, they
15 wouldn't be able to afford the regime fees. That
16 was the point I was trying to make.

17 Q In January 2009, was the regime concerned
18 about the expenses that would be incurred if it
19 replaced all the sliding glass doors at the
20 Shipwatch buildings?

21 A I'm sorry?

22 Q In January of 2009, was the regime
23 concerned about the expenses that would be incurred
24 to replace all sliding glass doors at the Shipwatch
25 buildings?

1 welcome to review the whole thing. I'm mostly
2 concerned about the e-mail in the middle here right
3 above your name.

4 A Okay.

5 Q The way I read this e-mail, September 14,
6 2010, from you to Ms. Ossewaarde was that Jim -- who
7 I assume was the president of the board?

8 A Yes, at that time.

9 Q -- was planning to do no sliding glass
10 door replacement in 2011 to keep the assessment as
11 low as possible. Is that correct?

12 A Since I only ordered 11 sliding glass
13 doors this year, is that --

14 Q Yes, ma'am.

15 A Okay. I'm lost on the question. Sorry.

16 Q You read the first part. "I only ordered
17 the 11 sliding doors for this year, and I think Jim
18 is going to discuss doing none next year to keep the
19 operating the same and the assessment as low as
20 possible." Do you see that?

21 A Yes, I do.

22 Q Was the president of the board of
23 directors of Shipwatch concerned in September of
24 2010 about the cost of replacing sliding glass doors
25 because of the assessment that would be required to

1 A I wasn't talking about replacing them. I
2 was talking about making repairs. But, of course,
3 replacing 264 doors at one time would have been
4 extremely expensive, is the point I was trying to
5 make.

6 Q This is post Lehman Brothers crash.
7 Right? We are in the recession in January of 2009.

8 A I don't remember. Yeah, I guess that
9 was. That was in 2008.

10 Q In January of 2009, was the board of
11 Shipwatch concerned about the finances of the regime
12 and the impact and assessment it would have on the
13 homeowners to replace all sliding glass doors at
14 Shipwatch?

15 A Yes, I would imagine so.
16 (Exhibit No. 138 marked for
17 identification.)

18 BY MR. KELLY:

19 Q Exhibit 138 is another one of these
20 e-mails I took from the documents produced to us
21 recently. It appears to be an e-mail exchange dated
22 September 14, 2010, with you and -- I'm going to
23 need help with her last name.

24 A Ossewaarde.

25 Q Anne Ossewaarde. And again, you're

1 the homeowners?

2 A Yes.

3 Q Was it your understanding that regular
4 maintenance work involving the replacement of the
5 sliding glass doors did not have to meet the
6 requirements of the current building code?

7 A I would not think that, no.

8 Q You would not think that?

9 A No. Oh, wait a minute. Let me think
10 about that. Okay. This is what Bob Wiggins
11 explained to me. Unless you did more than 50
12 percent replacement or remediation, you were not
13 required to bring everything up to today's code.
14 And that was another reason why he believed that
15 this was a continuation of the project and it was
16 never more than 50 percent, if that makes sense.
17 I'm only repeating what I think I know, what I was
18 told.

19 Q Did you ever relay that conversation to
20 Jeff Miller or Greg Isaacs to obtain their opinion?

21 A I probably did, because it's like I just
22 repeated to you what I've been told, and that would
23 be my route. I would say that to you or to anyone
24 that asked me. This is my understanding. As long
25 as you do less than 50 percent at any one time, you

1 do not have to bring the buildings up to the current
2 code. And because of the work that we are doing now
3 being so extensive, we are required to bring
4 everything up to today's building code.

5 MR. KELLY: I think we're probably
6 at a pretty good place to break.

7 (Lunch recess taken.)

8 BY MR. KELLY:

9 Q Over lunch did you have any additional
10 thoughts about the impact glass issue as it related
11 to the 2010 fall repairs?

12 A No.

13 Q Exhibit 96 is a document that was
14 previously marked, I think, by Mr. Cobb on Tuesday
15 dated March 9, 2007. Do you recall looking at this
16 building report with Mr. Cobb?

17 A Actually, no.

18 Q To help you, I'm just going to ask you
19 questions about the second page. So if you just
20 want to scan through that or read it word for word,
21 whatever your pleasure.

22 A Okay.

23 Q There is a reference to a gentleman named
24 Arnie. Remind me of who that is, please?

25 A Arnie Schaewe.

1 on the fourth and fifth floors at Shipwatch?

2 A Yes.

3 Q I think you said the board ultimately
4 decided to go with the per unit price exterior
5 sliding glass doors rather than a lump sum cost. Is
6 that right?

7 A I don't remember that that was the
8 discussion or the decision. This was just a
9 proposal for a per door price that they chose to
10 accept.

11 Q The second page of this Exhibit 103 or 33
12 reads, "We have not been able to secure a price for
13 the impact-resistant glass yet but are still working
14 on this price." Do you see that?

15 A Yes.

16 Q Was the price for impact-resistant glass
17 provided to you on behalf of Shipwatch for this 2008
18 sliding glass door replacement work?

19 A Not that I remember.

20 Q Would you agree with me that as of
21 September 2007 some consideration was being given to
22 using impact-resistant glass in the sliding glass
23 doors at Shipwatch?

24 A I honestly don't know specifically, but
25 it certainly says here that he was trying to secure

1 Q What was Arnie's role at Shipwatch in
2 March of 2007?

3 A I'm not sure if he was still board
4 president or if he was just a member of the board.

5 Q Exhibit 96 indicates that Mr. Schaewe
6 suggested using EFCO doors as part of the exterior
7 sliding door replacement project?

8 A Yes. The EFCO doors had been chosen for
9 the previous door replacement and they wanted to
10 continue using the same door.

11 Q It indicates that Mr. Schaewe was very
12 satisfied with the EFCO products?

13 A Yes.

14 Q Do you remember that being the case in
15 2007?

16 A Yes. I think they were satisfied with
17 the doors enough to continue using them.

18 Q We've marked twice an exhibit that was
19 given I think No. 33 and No. 103, which is a
20 Carolina Concrete Systems, Inc., proposal dated
21 September 6, 2007. Again, this proposal was from
22 Carolina Concrete Systems to you for Shipwatch?

23 A Yes.

24 Q And part of this proposal was for the
25 removal and replacement of new sliding glass doors

1 a price. So they must have been aware that there
2 might be one coming.

3 Q Even though he hadn't secured a price for
4 impact-resistant glass yet, he gave you a price for
5 removal and replacement of new doors. Right?

6 A Yes.

7 Q Is it fair for me to understand that
8 Exhibit 103 is a quote for the replacement of
9 sliding glass doors without impact glass?

10 A Correct.

11 (Exhibit No. 139 marked for
12 identification.)

13 BY MR. KELLY:

14 Q Exhibit 139, you'll see, has Bates labels
15 in the bottom right-hand corner of CCS 1086. This
16 came from Carolina Concrete's file, and it appears
17 to be a fax to Carolina Concrete from Randy Morgan
18 at Charleston Glass. Have you ever seen this
19 document before?

20 A I don't believe so.

21 Q It's dated January 18, 2008, and purports
22 to be a proposal for the replacement of 16 sliding
23 glass doors. Would you agree with that?

24 A Yes.

25 Q And inclusive of material, meaning the

1 doors, the quote is for \$63,120?
 2 A Correct.
 3 Q Were you made aware in January of 2008
 4 that a proposal for sliding glass doors had been
 5 made by Charleston Glass for \$63,120?
 6 A I don't recall. They ultimately did the
 7 work, but I don't recall any discussion about their
 8 proposal to Carolina Concrete.
 9 Q Do you see any reference to impact glass
 10 on this Exhibit 139?
 11 A No, I do not.
 12 Q Do you see the line that says, "Doors
 13 will match previous doors"?
 14 A Yes.
 15 Q Was it your understanding that Charleston
 16 Glass as the subcontractor to Carolina Concrete was
 17 to use the same type of door that had been installed
 18 at Shipwatch in 2004?
 19 A Correct.
 20 Q Did you have discussions with Mr. Morgan
 21 or Mr. Wiggins about that desire that the doors
 22 match what was installed at Shipwatch in 2004?
 23 A I don't remember any discussion.
 24 Q And the way I understood it was that in
 25 2007 when you got the quote and then in January of

1 installed in January ordered in the prior fall
 2 typically?
 3 A I can't remember for sure what happened.
 4 It seems like we did some doors early, which looks
 5 like we did more than we would ordinarily have done.
 6 Like I might have budgeted for ten, and we put in
 7 16, and I was making clear that everybody understood
 8 that six would have been done in January, which
 9 would have been the next budget year, but it was
 10 done earlier.
 11 Q In 2010, it was done earlier because
 12 Mr. Wiggins and Carolina Concrete were out there
 13 working on the EIFS. Right?
 14 A I assume so.
 15 Q In other words, the units that are marked
 16 with 2011 on them were installed in that fall time
 17 period where Mr. Wiggins and Mr. Morgan were
 18 removing and replacing sliding glass doors at
 19 Shipwatch?
 20 A Yes.
 21 Q If I look at unit D431, do you see that?
 22 A Yes.
 23 Q That's Dr. Mendiondo's unit?
 24 A Yes, it is.
 25 Q So his sliding glass doors that were

1 2008 you got the quote, that those doors would have
 2 been installed later in 2008. Is that right?
 3 A It appears to be, yes.
 4 Q And then in the fall of 2008 would you
 5 have been ordering doors to be installed in 2009?
 6 A I would assume so, since it says they
 7 will try to ship by February of 2008.
 8 (Exhibit No. 140 marked for
 9 identification.)
 10 BY MR. KELLY:
 11 Q I've marked as Exhibit 140 another
 12 document that came from the files produced by the
 13 plaintiffs' lawyers. Who generated the document?
 14 A I did.
 15 Q And why was this document generated?
 16 A I always keep track of the doors that are
 17 replaced; and when they are replaced, to keep track
 18 of those that have been done and those that still
 19 need to be done.
 20 Q And in the top right-hand corner it says,
 21 "2011 doors actually installed September 2010 would
 22 usually be installed January 2011." Do you see
 23 that?
 24 A Yes.
 25 Q So were the doors that were usually

1 replaced in the fall of 2010 were the doors we
 2 talked about earlier today. Right?
 3 A Yes.
 4 Q Those were the doors that Mr. Freeman had
 5 questioned and suggested did not contain impact
 6 glass?
 7 A No.
 8 Q Those are not?
 9 A That was not part of the project that --
 10 The 2010 project was A and B buildings ocean side.
 11 I consider the fourth and fifth floor sliding glass
 12 doors as something separate, because we didn't do
 13 all of them. And this was in building D, not in A
 14 and B.
 15 Q If we look back at Exhibit 130, let's
 16 just start with that. That's the e-mail from
 17 Mr. Freeman to Bob Wiggins where you're copied on
 18 November 5, 2010, asking for a meeting to discuss,
 19 among other things, whether impact glazing is
 20 required for the windows. Right?
 21 A Yes.
 22 Q And the last paragraph, the first
 23 sentence says, "The same questions that he has about
 24 the windows, including the impact glazing, apply to
 25 slider doors."

1 A Correct.

2 Q So the slider doors that were installed
3 in 2010 in the fall were part of the same work that
4 Mr. Wiggins and Carolina Concrete was performing?

5 A Yes. But in my mind, I have to keep them
6 separate for my sanity. But, yes, obviously it was
7 all to be done at that time. But because it wasn't
8 part of specific building A and B, in my mind it's
9 something separate.

10 But, yes, it was part of the work they
11 did in that time.

12 Q If we look at Exhibit 132, Mr. Morgan
13 says in that first paragraph that 11 sliders are
14 ready to be installed that are non-impact. Right?

15 A Yes.

16 Q So these sliders that were installed in
17 the fall of 2010 that were known to not have impact
18 glass were installed in a number of units including
19 that of Dr. Mendiondo?

20 A Correct.

21 Q Looking at this Exhibit 140, we talked
22 already about the doors that were installed in 2008.
23 Correct?

24 A Yes.

25 Q Just so we're clear, since you've been at

1 glass door was installed in that unit in that year?

2 A Correct.

3 Q And the same thing goes for 2009?

4 A Correct.

5 Q Did the regime choose to use the same
6 door as part of its replacement in 2009 that it used
7 in previous years?

8 A Yes.

9 Q Was any consideration given in 2009 to
10 using a different product?

11 A Not to my knowledge.

12 Q While we're on that subject, in 2010
13 there seemed to be an estimate from Gary Moore with
14 Salem or Structural Preservation -- whatever the
15 name of the group is -- Structural SPS for sliding
16 glass door replacement at Shipwatch?

17 A Oh.

18 Q Do you recall obtaining an estimate from
19 Structural in 2010?

20 A I do now, yes.

21 Q Why was that estimate obtained?

22 A I think it was -- I don't know that it
23 was really solicited. I think they came and knew
24 that we were doing work and wanted to give us a
25 price. And it was the same type door, just a

1 the regime prior to the time of this 2013/2014 work,
2 the only sliding glass doors that were replaced with
3 EFCO products were on the fourth and fifth floors.
4 Right?

5 A No. All of the master bedrooms on the
6 first, second and third floor, all four buildings,
7 were replaced with EFCO doors before I came. And
8 when they refer to the same EFCO doors, that's what
9 they are referring to.

10 Q I tend to mumble and am not clear all the
11 time. Let me try to rephrase my question.

12 Since you came back to the regime in
13 2005, you did not coordinate the installation of any
14 EFCO doors on floors one, two or three of any of the
15 buildings?

16 A Correct.

17 Q So the only EFCO doors that were
18 installed during your second tenure as property
19 manager were on floors four and five. Correct?

20 A Yes.

21 Q We've talked already about the ones that
22 were installed in 2008. Correct?

23 A Yes.

24 Q So on Exhibit 140 if I see where 2008 is
25 written next to a unit, I can assume an EFCO sliding

1 different -- It was an EFCO door. Just by someone
2 in North Carolina or something. And they felt like
3 they could give us a better price. So they made a
4 proposal.

5 Q What were they given to quote that job?

6 A I don't know.

7 Q Was there any sort of specifications
8 given to them?

9 A I honestly don't know. I really think
10 that it was like unsolicited. They just knew that
11 we were doing work and just wanted to see if they
12 could give us a better price.

13 Q Were they asked to give a proposal? I
14 know you're saying it was unsolicited. But once
15 they came in and told you that we would like to do
16 this, were they asked to give a quote for the same
17 type of door that had been installed previously?

18 A I honestly don't know. I would assume so
19 since that's what they gave us. Honestly, I just
20 barely remember that that happened.

21 Q Who did you deal with? There's a guy
22 named Greg Fuquay (phonetic) and then there's Gary
23 Moore.

24 A It was Gary Moore, I'm thinking. I just
25 kind of barely remember it. I had forgotten

1 completely until you brought it up.
 2 (Exhibit No. 141 marked for
 3 identification.)
 4 BY MR. KELLY:
 5 Q Exhibit 141 is another one of these
 6 e-mails I found in this recent production between
 7 what appears to be you and Mike Parker at
 8 Sutton-Kennerly dated June 5, 2009.
 9 A Yes.
 10 Q I think this pre-dates any report that
 11 Sutton-Kennerly issued for Shipwatch. I could be
 12 wrong about that, but I believe that's the case.
 13 It looks to me from reading this e-mail
 14 that there was some sort of communication prior to
 15 this June 5, 2009 e-mail based on the way it's
 16 worded.
 17 A Yes. But can I read it?
 18 Q Oh, absolutely. Take your time.
 19 A Okay.
 20 Q Exhibit 141, a June 5, 2009 e-mail from
 21 you to Mike Parker. Correct?
 22 A Yes.
 23 Q It looks to me reading it based on the
 24 verbiage that there was a conversation or a
 25 communication that preceded this e-mail.

1 A Yes.
 2 Q Can you tell me about that, please?
 3 A Bob Wiggins introduced me to Mike Parker
 4 from Sutton-Kennerly at a lunch, just because we
 5 were having issues that we needed to make sure
 6 proper maintenance was done each year. And he said
 7 that this is a good firm, they are highly respected,
 8 I know of no one that would criticize them. So I
 9 said sure.
 10 So we had lunch and he gave me his card
 11 and wanted me to send him apparently information,
 12 and it was put on my desk with everything else.
 13 When I finally came across it again, I said that I
 14 would meet with him.
 15 Q Do you recall how far in advance of this
 16 e-mail that was? You indicated it's taken a long
 17 time to get back to him, so I'm assuming it's some
 18 period of time.
 19 A I said it is the season, which means it
 20 was May, June, July, August. And then I refer again
 21 to I had to have something in August. So I probably
 22 told him I would do it that day or the next day, and
 23 it was a few weeks or a month later. Just guessing.
 24 Q Probably spring of 2009?
 25 A Well, you don't think it was the same

1 year?
 2 Q This e-mail says June 5, 2009. So I was
 3 saying the spring of 2009, you think it was?
 4 A I'm assuming, yes.
 5 Q At that meeting was it just you,
 6 Mr. Wiggins and Mr. Parker?
 7 A I believe so, yes.
 8 Q And was the recommendation for Mr. Parker
 9 made prior to the meeting or during the meeting?
 10 A I think that Bob just -- I was looking
 11 for someone to give me guidance in maintenance.
 12 Like we used to have a 20-year plan. It was no
 13 longer working. I needed something else. And Bob
 14 recommended -- he knew Mike Parker with
 15 Sutton-Kennerly, and that they would be very good at
 16 that. And so we just met him for lunch.
 17 Q Did Mr. Wiggins recommend anyone else
 18 with Sutton-Kennerly?
 19 A I don't think so. He just introduced me
 20 to Mike Parker.
 21 Q So his recommendation at that time was
 22 for Mr. Parker as opposed to Jeff Miller?
 23 A Well, it wasn't really a recommendation
 24 other than this is an excellent person if you're
 25 interested and I will introduce you, and what you do

1 beyond that does not concern me. It was more of
 2 that.
 3 Yes, Mike Parker is the person that I met
 4 and apparently contacted for the first visual
 5 inspection that was done.
 6 Q The reason I ask, it seemed like you said
 7 earlier that Mr. Wiggins recommended
 8 Sutton-Kennerly, and I was just trying to understand
 9 whether he actually recommended Sutton-Kennerly as a
 10 firm or Mr. Parker.
 11 A Well, that's a good question. I don't
 12 think of one different from the other. He probably
 13 had a project going with Mike Parker or something.
 14 He recommended Sutton-Kennerly. But Mike Parker is
 15 the person he introduced me to that was from
 16 Sutton-Kennerly. But I don't think of them
 17 separately.
 18 Q I understand that. My curiosity is when
 19 he said I've got -- Did he say I have someone I
 20 would like to introduce you to, or I have a group
 21 that does this that I want to introduce you to?
 22 A He referred to it as Sutton-Kennerly
 23 always.
 24 Q Back on Exhibit 141, in that second
 25 paragraph there is a discussion about the kick-out

1 situation. Do you see that?
 2 A Yes.
 3 Q And you indicate you think it's a matter
 4 of forcing the contractor to do the work as part of
 5 a larger contract?
 6 A Yes.
 7 Q Who was that contractor you're referring
 8 to?
 9 A Glasgow Roofing.
 10 Q And you indicate you believe the design
 11 would have already been agreed upon?
 12 A Correct.
 13 Q What design are we talking about?
 14 A This would go back to the project that
 15 was -- what I would say is Bob Sisroy was the
 16 engineer representing Shipwatch doing the design
 17 work for them at that time. And the kick-outs are
 18 part of the roofing system. So that would have been
 19 Glasgow Roofing, is my reason for saying that.
 20 Q Apparently during your conversation with
 21 Mr. Parker he had some concern about the EFCO doors
 22 that were being installed at the regime. Is that
 23 right?
 24 A We were having problems with them
 25 leaking, I think, is why I brought that up, because

1 I said I certainly hope we have done it correctly.
 2 Q Right, and you say there are over a
 3 hundred that have been installed already?
 4 A Correct.
 5 Q But not all of them are leaking. Right?
 6 A Correct.
 7 Q It sounds like from your prior testimony
 8 there were a few new ones that had leaks around them
 9 after they were installed?
 10 A Correct.
 11 Q I'm interpreting your e-mail to suggest
 12 Mr. Parker had a concern that was more systemic. Am
 13 I misinterpreting that?
 14 A Honestly, I don't remember. I just
 15 honestly don't remember. "Also, the EFCO doors we
 16 are installing, we have already done over 100, so I
 17 certainly hope we have done it correctly." He was
 18 just going to come and do a visual inspection of the
 19 buildings, I believe, to see that we were doing
 20 things right. Just a confirmation that we had done
 21 things right.
 22 Q Did Mr. Parker talk to you about a
 23 concern over the design pressure rating of the doors
 24 being installed at Shipwatch back in 2009?
 25 A I don't remember having any -- I think

1 really the only conversation I had with him was over
 2 lunch, maybe on the phone once after that. But
 3 after that, I never dealt with him again or talked
 4 to him.
 5 Q In June of 2009, did Mr. Parker raise any
 6 questions with you about whether the EFCO products
 7 needed to have impact glass?
 8 A I don't remember that.
 9 Q When these door replacements took place
 10 in 2008, 2009, 2010, did the unit owners or their
 11 tenants have to vacate those premises?
 12 A Yes.
 13 Q For how long?
 14 A For however long it took them to take
 15 them out and put them back in.
 16 Q Let's take it by unit. D429 is
 17 Mr. Cipkala's unit?
 18 A Yes.
 19 Q And he had his master bedroom slider
 20 replaced in 2009?
 21 A Correct.
 22 Q And that's on the fifth floor?
 23 A Correct.
 24 Q Did he have to vacate his entire unit for
 25 some period of time while that single door was

1 replaced?
 2 A Yes.
 3 Q Was there additional work that was being
 4 done to the fifth floor of his unit while that door
 5 was being replaced?
 6 A No.
 7 Q Just the door replacement?
 8 A Just the door.
 9 Q And your testimony is you don't know how
 10 long he had to vacate his unit for that door
 11 replacement?
 12 A I honestly don't. I honestly don't
 13 remember. I'm sure he could tell you.
 14 Q Less than a week?
 15 A Probably more like a couple of weeks or
 16 so.
 17 Q Have you managed any regimes that have
 18 had doors removed and replaced while owners stayed
 19 in their units?
 20 A No.
 21 Q Are you aware of other regimes that have
 22 had unit owners stay in the units while doors or
 23 windows were replaced?
 24 A I don't know any that have or have not.
 25 Q Was there a requirement imposed by the

1 regime that the unit owner vacate the unit during
2 the door replacement work?

3 A Well, I think it probably was at the
4 requirement of the contractor so that they were not
5 liable for anybody being injured while the door was
6 going in, going out or out. They put plywood over
7 the whole opening which made it very dark.

8 Q You're thinking on the outside two weeks
9 is about the time it takes to replace a single door?

10 A I'm really embarrassed to tell you, I
11 just have no clue. I just don't remember. If it's
12 just a door, no outside work being done, they remove
13 the door, they do whatever they have to do to the
14 framing, they pour a concrete curb, that takes 24
15 hours to dry. So a week or two would be my thought,
16 but I sure wouldn't want to take it to the bank. I
17 don't remember specifically.

18 Q There's been a general discussion in the
19 prior two days of your deposition and a few moments
20 ago about some door leaks.

21 A Yes.

22 Q It's my understanding that a certain
23 number of newer doors had water coming in around
24 them after they were replaced. Is that right?

25 A Yes. Correct.

1 you using it generically to say water is coming in
2 the location where the door is in the hole?

3 A Generically to tell you that the carpet
4 was wet around a sliding glass door area.

5 Q So it's fair to say that you have not
6 made a determination when you say "door leak" that
7 water has penetrated through the EFCO door?

8 A No, not at all. There's a wall, ocean
9 side. There's the sliding glass door. We would
10 check from corner to corner, and any wetness from
11 corner to corner would be noted, and it would be
12 said to the left of the door, right of the door.
13 But it was never specifically meant to say that
14 there was water coming in around that glass. That's
15 not -- My terminology may be really bad for
16 lawsuits. It's just a water leak is wet carpet.

17 Q So if someone interprets your testimony
18 about door leaks to mean the EFCO product itself
19 leaked, meaning water came through it, that would be
20 an incorrect interpretation?

21 A That would be incorrect.

22 Q In your tenure as property manager, has
23 the glass with any sliding glass doors or windows
24 been broken?

25 A Not to my knowledge. I don't think so.

1 Q Can you give me a number of how many
2 doors, new EFCO doors have experienced water
3 intrusion through or around them?

4 A No. I'm sure it's recorded somewhere.

5 Q How would I find where it's recorded?

6 A Well, one of the items that we had
7 yesterday or Tuesday was when we had gone in to look
8 to see leaks and they were recorded and how many
9 times they had leaked. That was one of the items
10 that would say which of the new doors had leaked.

11 Q Is that the best place to look to find
12 historical data about leaks at new EFCO doors?

13 A Yes, I think so.

14 Q When you're talking about a door leak, it
15 was my understanding from your testimony on Tuesday
16 that you determined a leak by determining wetness
17 around the door?

18 A That's correct.

19 Q Have you ever actually observed water
20 coming in, around or through glass?

21 A No. I only went in afterwards to feel
22 the carpet. That's the only -- I don't think I've
23 ever been in a condo when the rain was pouring down.
24 It was usually afterwards that I would go in.

25 Q When you used the term "door leak," are

1 Q Does the regime have a policy on how it
2 handles glass replacement within sliding glass doors
3 and windows?

4 A I don't know that we have a policy. I
5 only remember it happening once or twice. And it
6 was because glass fogged up and we replaced glass
7 because of that. I don't think we've ever had a
8 broken sliding glass door.

9 Q Who paid for the cost to replace the
10 fogged glass?

11 A On the sliding glass door, I believe
12 Shipwatch paid for it, considering it -- since we
13 are responsible for the door, we did.

14 There was a window or two, the stationary
15 living room windows, first, second and third floor,
16 I think there were a couple of those that were
17 foggy. But they were not in the budget, and so the
18 owner was offered, if you want to have it done, I'll
19 get the work done, but you have to pay for it. And
20 I don't believe they did it.

21 (Exhibit No. 142 marked for
22 identification.)

23 BY MR. KELLY:

24 Q I've marked as Exhibit 142 what's
25 entitled the Master Deed of Shipwatch Horizontal

1 Property Regime. It says phase one at the bottom.
2 I'll tell you that I don't know if this is a
3 complete copy of it. If you could flip through and
4 tell me whether this is a document that you
5 recognize as the master deed.

6 A I recognize it, yes.

7 Q Do I seem to be missing any substantial
8 part of this exhibit?

9 A This is complete in that it's all of the
10 verbiage. It's incomplete as far as the amendment,
11 which would just be drawing in buildings C and D.
12 So I would consider it complete.

13 Q I've flagged a page in what I've handed
14 you and marked as Exhibit 142 just for your
15 reference. You'll actually need to turn back to
16 page 10. At the bottom where it says "maintenance
17 and repair by co-owners of apartments," can you just
18 read that to yourself, read that paragraph, please.

19 A Okay.

20 Q On the page I've marked, page 11 of
21 Exhibit 142, that first full sentence reads, "Such
22 co-owner shall further be responsible and liable for
23 maintenance, repair and replacement of any and all
24 window glass, glass doors, wall, ceiling and floor
25 surfaces or coverings," et cetera.

1 A Yes.

2 Q Has the board taken a position on whether
3 or not the regime or the unit owners themselves are
4 responsible for the replacement of glass versus the
5 entire frame of the door or window?

6 A That's what I was referring to earlier.

7 For example, A407 had fogged glass in the sliding
8 glass door. And I had that glass replaced at
9 association expense.

10 Q Have any amendments been filed to the
11 master deed attempting to clarify or change the way
12 in which glass or glass for doors or windows falls
13 upon the unit owner as the responsible party?

14 A There have been amendments, but I think
15 it really leans more to clarifying that the
16 association will be responsible for replacement. It
17 recognizes that the limited common area, which would
18 be the balcony, stating that the owner would be
19 responsible for keeping that clean, they would be
20 responsible for screens. But that's the only
21 changes that have been made. More to that rather
22 than the regime being responsible for replacing a
23 broken door.

24 Q Look back at 140. I don't know if you've
25 still got it there. We talked about D429, Cipkala,

1 A Correct.

2 Q Does the regime understand that provision
3 of the master deed to make the glass in the sliding
4 glass doors and the windows the responsibility of
5 the unit owner to replace?

6 A It's one of the biggest arguments that we
7 have in the association. To me, when I read it, I
8 interpret it as, yes, they are responsible. The
9 association chooses to relay that as -- If you read
10 farther on, in areas it will describe the common
11 areas and the limited common areas, and the doors
12 and windows are listed as limited common. And there
13 is a section that says that those are the
14 responsibility of the association.

15 So when I tell you that the maintenance
16 of it, which we talked about Tuesday -- cleaning the
17 tracks and replacing the handle -- that, to me, is
18 maintenance. And the board allows me to tell the
19 owner you have to take care of it. But when it
20 comes to replacing a door or a window, the
21 association does that.

22 Q I assume you know it from your past
23 experience managing regimes. It's possible to
24 replace just glass and not the entire window or door
25 frame?

1 and Dr. Mendiondo's unit D431.

2 A Yes.

3 Q D431, Dr. Mendiondo had two sliding glass
4 doors replaced in the fall of 2010. Right?

5 A Correct.

6 Q And Mr. Cipkala only had one door
7 replaced in 2009. Right?

8 A Correct.

9 Q And B409 is Mr. Trombino. Is that right?

10 A Yes.

11 Q Is that an end unit?

12 A That's an end unit townhouse.

13 Q So it's different than Dr. Mendiondo's
14 unit. Correct?

15 A Correct.

16 Q Even though Dr. Mendiondo is on the
17 fourth and fifth floor and Mr. Trombino is, their
18 units are different?

19 A Only in that Mr. Trombino being on the
20 end has windows on the outside wall. Mr. Mendiondo
21 is an interior unit, so he has another unit on each
22 side.

23 Q And Mr. Cipkala is an interior unit as
24 well?

25 A Correct.

1 Q And all three of those units are
2 different than every unit on the first through three
3 floors of buildings A, B, C and D?

4 A Yes.

5 Q In terms of windows and doors, buildings
6 C and D before this latest repair and interior unit
7 on floors one through three only had one EFCO
8 sliding glass door. Right?

9 A I'm sorry?

10 Q Let me try again. Floors one through
11 three on buildings C and D before this latest round
12 of repairs, an interior unit on those floors only
13 had one EFCO product installed?

14 A Correct.

15 Q And the end units would have had the same
16 one sliding glass door, but it may have had some
17 windows as well?

18 A Correct.

19 Q In fact, it would have had one sliding
20 glass door in the bathroom as an EFCO product.
21 Right?

22 A The end unit, first, second and third
23 floor, had a bathroom window on the outside that was
24 replaced during that first project.

25 Q And buildings A and B, the units on

1 Q No owners paid for the installation of
2 impact glazing in doors and windows installed at
3 Shipwatch either. Right?

4 A Not to my knowledge.

5 Q And the regime did not contract with any
6 contractors to install impact glazing in the doors
7 and windows at Shipwatch. Right?

8 A Prior to?

9 Q Prior to 2013 or 2014.

10 A Correct.

11 Q Would you agree with me that impact glass
12 is much more expensive than regular insulated glass?

13 MR. RAMSEY: Object to the form.

14 A I don't -- I would assume that it is. I
15 don't know that I looked at the bill for an
16 impact-rated sliding glass door. I don't know that
17 I've looked at it. That would be my assumption.

18 BY MR. KELLY:

19 Q And as part of the 2013/2014 repairs,
20 additional structural support is being added to the
21 window and door openings on buildings C and D.
22 Correct?

23 A Correct.

24 Q Would you agree with me that Shipwatch
25 did not pay any contractors to install that

1 floors one through three would have had an EFCO
2 sliding glass door -- or still do have an EFCO
3 sliding glass door and two stationary EFCO windows?

4 A Correct.

5 Q And Dr. Mendiondo's unit, for example,
6 D429, does not have those stationary windows?

7 A It does not.

8 Q Neither does Mr. Cipkala's or
9 Mr. Trombino's?

10 A Correct.

11 Q Do you agree that adding windows and
12 doors to the Shipwatch buildings that have
13 impact-rated glass is an upgrade?

14 A It would depend on what you were talking
15 about. It's an upgrade if you're talking about
16 property values. But it's a requirement when you're
17 talking about code requirements.

18 Q Do you agree with me that the Shipwatch
19 regime did not pay for impact glass in any of the
20 doors or windows installed at Shipwatch?

21 A Previously?

22 Q Before the repairs done in 2013/2014, the
23 regime did not pay for any impact glass in sliding
24 glass doors or windows?

25 A Correct.

1 additional support prior to 2013 and 2014 at
2 buildings C and D?

3 A I don't know how to answer that.

4 Q Tell me what's troubling you and I'll see
5 if I can try and reword it.

6 A When you say we didn't pay anyone to beef
7 up the studs prior to this project, we paid a
8 contractor to install a sliding glass door to
9 replace the -- the synthetic stucco, replace it with
10 the Durock stuff. We just paid them to do the job.
11 If it required studs, they were to do that.

12 Q You've dealt with contractors for a long
13 time as a regime manager. Right?

14 A Yes.

15 Q And you understand that they price or
16 make quotes based on the amount of work and the
17 amount of materials the job requires. Right?

18 A Yes.

19 Q So they did not quote you or charge you
20 based on going in to structurally improve or enhance
21 these door and window openings when they did the
22 work back in 2010 or prior. Correct?

23 A I don't remember, other than it seems
24 like there's -- it's like a per unit cost. If they
25 add a stud, you're going to be charged X amount for

Page 482 1 it. That's why, I'm sorry, I don't really know how 2 to answer it, because I don't know that they were 3 told to add studs. I just know that if there was 4 one that needed to be replaced or sistered, that 5 they would do that and bill us for it. 6 Q Is it your understanding that the work 7 that is being done around windows and doors on 8 buildings C and D at Shipwatch to enhance or improve 9 the structural capacity of openings is being done to 10 support these wind rated and higher DP rated windows 11 and doors? 12 A That is my understanding, yes. 13 Q Would you agree with me that the regime 14 did not ask Carolina Concrete or any other 15 contractor to do the same beefing-up work around the 16 doors and windows prior to 2013/2014? 17 A I don't think I can agree with that, 18 because they gave us a proposal to replace or put in 19 studs as needed. So I don't think that the 20 association would have said specifically put them 21 in. They said put them in as necessary and they 22 gave us a price. If we put them in, this is what 23 it's going to cost you. 24 Q In 2010 when Carolina Concrete was 25 replacing 72 stationary windows and whatever number	Page 484 1 Beth Wilkins at Wells Fargo Home Mortgage? 2 A Yes. 3 Q Who is Mary Beth Wilkins at Wells Fargo 4 Home Mortgage? 5 A I have no clue. It must have been 6 someone trying to refinance their condo or 7 something. 8 Q So this would not have related to any 9 loan that the regime was taking out or attempting to 10 take out? 11 A I don't think so. With Wells Fargo Home 12 Mortgage? No. 13 Q On June 19, 2012, in your letter to 14 Ms. Wilkins, you're telling her that Shipwatch 15 regime plans upgrades to the buildings beginning 16 2012 that include replacing doors and windows with 17 impact glass. Correct? 18 A Let me find that. Okay. I'm looking for 19 the word "upgrade." I don't see that. 20 Q Word five of the only paragraph. 21 A Oh, okay. I was looking farther down. 22 Upgrades and repairs to the buildings, yes. 23 Q In writing this letter to Ms. Wilkins, 24 were you telling her that the replacement of doors 25 and windows with impact glass was an upgrade to the
Page 483 1 of doors -- 11, I believe -- was it your expectation 2 that they were going to go into the walls in 3 buildings A through D at Shipwatch and install new 4 support? 5 A If it was needed, yes. 6 Q Did you believe that if it was needed you 7 would have to pay more money as part of a change 8 order? 9 A I'm pretty sure there was a price for 10 extra studs. I don't just don't remember specific. 11 Q So if extra stud work was going to be 12 done around the window and door openings, the regime 13 would have had to pay for it back in 2010? 14 A Extra stuff, yes. 15 Q And you can't tell me today whether it 16 did, in fact, or did not pay for extra studs to be 17 added to support the new windows and doors that were 18 being installed? 19 A I cannot answer specifically. It gets 20 very complicated. 21 (Exhibit No. 143 marked for 22 identification.) 23 BY MR. KELLY: 24 Q Exhibit 143 appears to be a letter from 25 you sent via e-mail dated June 19, 2012, to Mary	Page 485 1 Shipwatch buildings? 2 A Not necessarily, I don't think. 3 Q We are going to fast forward to the 4 2013/2014 time frame and perhaps the 2012 time 5 frame. So maybe we're not fast forwarding that 6 much. 7 The original plan for the repairs or 8 renovations at Shipwatch was to leave in the, quote, 9 new EFCO product. Right? 10 A Yes. 11 Q And the Shipwatch regime was happy with 12 the performance of the EFCO products? 13 MR. RAMSEY: Object to the form. 14 A I believe so, yes. 15 (Exhibit No. 144 marked for 16 identification.) 17 BY MR. KELLY: 18 Q I've marked as Exhibit 144 a document 19 that I'm going to tell you I think Mr. Trombino 20 prepared based on the data behind the data of 21 electronic documents that you produced. Do you 22 recognize the document that I marked as Exhibit 144? 23 A Not specifically, but I'm sure I've seen 24 it. 25 Q We kind of alluded to this earlier. I'll

28 (Pages 482 to 485)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 call your attention to the last two paragraphs.
 2 A Okay.
 3 Q I believe you testified earlier that Jeff
 4 Miller and Sutton-Kennerly Associates were
 5 attempting to get the EFCO products installed at the
 6 buildings grandfathered in. Correct?
 7 A They did ask, yes.
 8 Q And it was the building official at the
 9 Isle of Palms building department that informed
 10 Mr. Miller that because of these repairs that were
 11 taking place at Shipwatch all of the products had to
 12 meet the current building code. Is that right?
 13 A I think it's my understanding he said
 14 that they had to be replaced.
 15 Q Has anyone talked to you about whether or
 16 not they could have stayed in had they not come out
 17 of their hole? Do you understand what I'm talking
 18 about?
 19 A Well, I think one of the questions that
 20 Jeff Miller at Sutton-Kennerly asked was if there's
 21 something we could do, like put up hurricane
 22 shutters, to protect them, and they said no.
 23 Q Is that information coming from
 24 Mr. Miller?
 25 A That was told to us by Mr. Miller, yes.

1 in the doors and windows at Shipwatch be impact
 2 rated increases the projected cost of the project by
 3 about \$1 million. Correct?
 4 A Correct.
 5 Q Do you understand that to be the case?
 6 In other words, do you have any disagreement with
 7 Mr. Trombino's report?
 8 A Yeah, I can't substantiate it, but I
 9 wouldn't disagree with it.
 10 Q It also indicates in the next paragraph
 11 that due to the extensive framing and drywall work
 12 that has to be done to make the building walls code
 13 compliant, an additional increase of approximately
 14 \$400,000 is needed.
 15 A Correct.
 16 Q Any reason to disagree with his
 17 recitation?
 18 A No.
 19 Q Was there any discussion with the
 20 building official or Mr. Miller as to whether the
 21 impact rating issue was for all floors or just
 22 floors one through three?
 23 A I don't remember.
 24 (Exhibit No. 146 marked for
 25 identification.)

1 Q Is it your understanding that the work is
 2 having to comply with the code in effect in 2013?
 3 A Yes.
 4 Q That last paragraph of Exhibit 144 says
 5 that based on the mandate from the Isle of Palms
 6 building department, it's necessary to beef up the
 7 framing around the windows and doors to meet the
 8 code in effect in 2013. Right?
 9 A Yes.
 10 (Exhibit No. 145 marked for
 11 identification.)
 12 BY MR. KELLY:
 13 Q Exhibit 145 is another document that came
 14 from this recent production. Maybe we had it
 15 before, but I don't remember seeing it.
 16 A Me either.
 17 Q Look at it for a minute and just kind of
 18 give me an idea of what you think it is, that would
 19 be helpful.
 20 A I think this was just a report. And I
 21 believe that it would be by Mr. Trombino to the
 22 board of directors.
 23 Q And Mr. Trombino's report here in Exhibit
 24 145 about five paragraphs down indicates that the
 25 building department's requirement that all the glass

1 BY MR. KELLY:
 2 Q Exhibit 146 appears to be an e-mail
 3 exchange on June 2, 2012, between Tom Miller and a
 4 group of people that seems to include you. Is that
 5 correct?
 6 A Yes.
 7 Q Do you recall this exchange?
 8 A No, but I've been exposed to these things
 9 before. So, yes, I'm sure I saw it.
 10 Q Mr. Tom Miller is raising the question
 11 with I guess the board and you as to whether the
 12 sliding glass doors and windows that are being
 13 completely removed and replaced can simply be
 14 reglazed in place.
 15 A Yes.
 16 Q Was that question asked of Jeff Miller?
 17 A I believe it probably was. Tom Miller,
 18 he just came up with the idea of putting a coating
 19 over the glass in place. And I think Jeff did
 20 answer that saying that it would not meet the proper
 21 wind loads or something. It was the same guy that
 22 went to Charleston Glass on his own.
 23 Q Did Mr. Miller contact anyone at EFCO to
 24 determine whether or not that was possible?
 25 A I don't know whether he talked to EFCO or

1 not. But I would think that he talked to someone,
2 another engineer, in his office or himself or
3 someone. He wouldn't just pop off. No matter how
4 silly the question that's asked, he always gives
5 them a sincerely serious, proper answer. He doesn't
6 just pop off like I do.

7 Q There's an e-mail that I didn't print
8 that was kind of a response saying Mr. Jeff Miller
9 is looking into it and intends to contact EFCO about
10 that option. I'm just wondering if Jeff Miller ever
11 reported to you or the board as to what he found
12 out, if anything, from EFCO or its dealer?

13 A I don't know if he reported to us that he
14 spoke with someone at EFCO. He did inform us that
15 that was not acceptable.

16 Q For any of the doors or windows?

17 A Correct.

18 (Exhibit No. 147 marked for
19 identification.)

20 BY MR. KELLY:

21 Q Exhibit 147 is another document produced
22 to us recently. You can look at the whole thing or
23 the highlighted portion. That's what I'm going to
24 ask you about.

25 A Okay.

1 installed.

2 There's not that many. I don't even know
3 if I could go back and figure out who all had them.
4 But this was just saying that they would no longer
5 allow those to be attached to the new stucco.

6 Q On buildings C and D. Correct?

7 A Well, in any building after this work is
8 completed.

9 Q So what about at buildings A and B when
10 the work has not yet been done, can they put
11 hurricane shutters on their windows and doors?

12 A I'm sure they could if they wanted to
13 spend that kind of money for one month.

14 Q Dr. Mendiondo had hurricane shutters on
15 his sliding glass doors?

16 A Yes, he did.

17 Q When were those removed?

18 A Prior to this project. Prior to
19 September 2013.

20 Q What about Mr. Trombino? Does he have
21 hurricane shutters?

22 A Yes.

23 Q What about Mr. Cipkala?

24 A I don't know. I don't remember for sure.

25 Q I read the comment here on Exhibit 147

1 Q First of all, these are draft minutes or
2 final minutes of the Shipwatch Horizontal Property
3 Regime Board of Directors?

4 A They would be final minutes.

5 Q Did you attend that meeting?

6 A I did.

7 Q I understand that paragraph and
8 particularly that highlighted portion to be saying
9 that the board is rescinding their policy of
10 permitting hurricane shutters because it would be
11 redundant to have hurricane shutters and
12 impact-rated glass.

13 A Correct.

14 Q How many units had hurricane shutters
15 prior to the commencement of work at Shipwatch in
16 2013?

17 A Maybe four or five units. But, of
18 course, that would be all doors in their unit. The
19 master deed states that nothing can be attached to
20 the building without board of director's approval,
21 which included storm shutters. And after Hugo so
22 many people requested that the board said, okay, if
23 you meet certain specifications, it has to be a real
24 hurricane shutter by a real hurricane company. They
25 have to be bronze. They would allow them to be

1 about the redundancy of hurricane shutters with
2 impact-rated glass to mean that they accomplish the
3 same purpose?

4 A Correct. That's what I would think, yes.

5 Q Tell me about the policy, how it actually
6 works. When Dr. Mendiondo, for example, decided he
7 wanted hurricane shutters on his unit, does he come
8 through you to do that?

9 A No. He would have contacted me to say
10 that he wanted to get hurricane shutters, and I
11 would just remind him that they had to be bronze.
12 They had to be real hurricane shutters installed by
13 a real company, a reputable company. And that's
14 all.

15 Q Who brought up the idea of the hurricane
16 shutters? Was that while you were there or before?

17 A It was after I left. I was there until
18 1993. Up until that time, no one had them. And
19 apparently new owners coming in felt the need
20 because of Hugo. So the board decided to allow it.

21 Q When you came back in 2005, was the
22 policy already in place?

23 A Yes. There were some hurricane shutters
24 on the building.

25 Q Did people add hurricane shutters after

1 you came back in 2005?
 2 A Dr. Mendiondo. I think the owners of
 3 B311. That's all I remember for sure.
 4 Q Mr. Trombino had his master bedroom
 5 slider and his guest bedroom slider replaced in
 6 2008/2009. I guess they would have had to remove
 7 his hurricane shutters and reinstall them?
 8 A Correct.
 9 Q For example, for Mr. Trombino on the
 10 hurricane shutters going back in 2008 and 2009, the
 11 regime knew that the glass in those sliding glass
 12 doors were not impact rated. Right?
 13 A Say it again.
 14 Q For Mr. Trombino, unit B409, when his
 15 hurricane shutters were removed, his master bedroom
 16 slider was replaced and the hurricane shutters were
 17 reattached, the regime knew at that time that the
 18 glass in his exterior sliding glass door in the
 19 master bedroom was not impact rated?
 20 A In what year?
 21 MR. RAMSEY: Object to the form.
 22 BY MR. KELLY:
 23 Q 2008.
 24 A Wasn't that something that we already
 25 discussed in 2010? I don't remember, other than

1 what we've talked about today.
 2 Q If hurricane shutters accomplish the same
 3 purpose as impact glass, why would the hurricane
 4 shutters be needed if the regime believed that the
 5 glass in the windows and doors were impact rated?
 6 A I don't know that we believed they were
 7 impact.
 8 Q That's my question. Did the regime
 9 believe in 2008 and 2009 when Mr. Trombino
 10 reattaches hurricane shutters to the outside of his
 11 sliding glass doors that the glass in those doors
 12 were impact rated?
 13 MR. RAMSEY: Object to the form.
 14 A I think that they had in their hands the
 15 engineering report from Mr. Broadway that they were
 16 sufficient. But I don't think that we used the term
 17 "impact" in our normal conversations. To me, it was
 18 always wind rated, 120 mile or 140 mile an hour wind
 19 rated windows.
 20 BY MR. KELLY:
 21 Q Mr. Broadway's report didn't get
 22 generated until 2010, November. And Mr. Trombino's
 23 sliding glass doors and hurricane shutters were
 24 reattached in 2008, 2009.
 25 A So the question is?

1 Q They couldn't have had the Broadway
 2 report at that time. Right?
 3 A Okay. So the question is did we believe
 4 they were impact glass at that time?
 5 Q Right.
 6 A I don't know that we'd even thought about
 7 it.
 8 MR. KELLY: I think those are all
 9 the questions I have for you. Thank you for your
 10 time.
 11 (Recess taken.)
 12 EXAMINATION
 13 BY MR. BARFIELD:
 14 Q I'm Michael Barfield. I represent Gary
 15 Freeman and Gary Freeman Architects, Inc., in this
 16 case. I understand there's already been some
 17 discussion today about Mr. Freeman's work at
 18 Shipwatch, but obviously I want to get into some
 19 pretty significant detail as to what he did, what he
 20 was supposed to do and your recollection of his time
 21 out there.
 22 I've got some documents to show you, but
 23 first I would like to just talk to you and get your
 24 recollection of how Mr. Freeman came to be on the
 25 project and your preliminary discussions with him.

1 A Well, what I remember is we were shopping
 2 for an engineer or architect to guide us through the
 3 project that was to replace the synthetic stucco on
 4 the ocean side of A and B building and install the
 5 DEFS, the Durock thing.
 6 And I was just looking for different
 7 ones, and Bob Wiggins said he had a project going
 8 that Gary Freeman was the architect on. Shipwatch
 9 is always so mindful of their money. He said he
 10 works by himself. I think he's very reasonable if
 11 you'd might like to meet with him. So I called Gary
 12 and set up an interview.
 13 Q Now, before we talk about that initial
 14 interview, I would like to put a finer point on what
 15 you mean by you were looking for an architect or
 16 engineer to, quote, guide you through the project.
 17 What did you mean by guide?
 18 A Well, you have a contractor and you have
 19 me. There has to be somebody that keeps the
 20 contractor on target appropriately, properly, and
 21 that's not me. And I was not comfortable -- Even
 22 though it was a continuation of the previous
 23 projects, I was not comfortable going through it
 24 myself.
 25 Q I think we can both agree that

1 Mr. Freeman -- it was never contemplated that
2 Mr. Freeman was going to be doing any actual design
3 work at Shipwatch. Is that correct?

4 A That's correct.

5 Q You set up an initial interview with him.
6 Did that meeting take place?

7 A I'm sure it did. I honestly don't
8 remember it.

9 Q What is the first direct interaction with
10 Gary Freeman that you do recall?

11 A I'm sorry. I honestly cannot pinpoint
12 specific meetings with him. I know I talked to him
13 on the phone several times. I know he came to my
14 office. I know he visited the job site. If he
15 walked in the room, I would know who he is. He
16 always wore a hat. But specific times, dates,
17 reasons, I can't tell you.

18 Q Do you recall discussing with him as a
19 preliminary matter what it is that you were
20 retaining him to do?

21 A I would think, yes. I think that is the
22 reason why I contacted both Bob Wiggins and Bob
23 Sisnroy to ask them for the original design so that
24 he would have something to know how to guide these
25 people through the job they were getting ready to

1 do. Neither one of them could supply it, and the
2 job started.

3 Q To the best of your recollection,
4 Mr. Freeman performed his work start to finish
5 without the benefit of any design drawings?

6 A Yes, no specific design drawings from Bob
7 Sisnroy, other than there was information in one of
8 the notebooks there that Bob Sisnroy had stated that
9 he preferred to use an Acrocrete wall system. That
10 was his recommendation. So that would have been the
11 only thing that Gary Freeman would have had to guide
12 him through the work.

13 Q If I may, how was Mr. Freeman supposed to
14 guide, to use your word, the contractor through the
15 process if he did not have any documents to inform
16 him as to what he was guiding the contractor
17 through?

18 MR. RAMSEY: Object to the form.

19 A I don't know, other than he is an
20 architect. He knows stuff. And he knows an
21 Acrocrete wall system that he would be looking at.

22 BY MR. BARFIELD:

23 Q Are you certain that he is familiar with
24 the Acrocrete product or was at the time?

25 A Well, like I said, I don't even remember

1 the conversations that I had with him. So
2 specifically I can't say.

3 Q Let me show you what's already been
4 marked as Exhibit 128. This is a letter from
5 Mr. Freeman to you dated September 22, 2010. You
6 can look at that again just to refresh your
7 recollection.

8 A Okay.

9 Q What is that document, to the best of
10 your recollection?

11 A It looks to me like it's an introduction
12 letter showing his interest in working for us and
13 what he would need or why he thought that he would
14 be a good fit for the job.

15 Q Let me show you another letter dated a
16 couple of weeks before from Mr. Freeman. This is
17 dated September 3, 2010. I've marked it as Exhibit
18 148.

(Exhibit No. 148 marked for
identification.)

21 A It's the same letter.

22 BY MR. BARFIELD:

23 Q Not quite. Have you had an opportunity
24 to compare?

25 A I did. I see a couple of sentences in

1 here that are different.

2 Q So do you recall receiving the first
3 letter from Mr. Freeman?

4 A Again, I remember talking to him. I know
5 he sent me a lot of letters and stuff. And I
6 remember him. But specifics, I'm sorry, I just
7 don't.

8 Q Well, would you agree with me that the
9 scope of work that he's proposing from one letter to
10 the next is slightly different?

11 A No. But if you'd help me, I probably
12 would.

13 Q Let's walk through the two paragraphs --
14 the paragraph in each letter that begins, "My
15 services include".

16 A Yes.

17 Q So in the September 3rd letter, he says,
18 "My services include reviewing the existing contract
19 documents to familiarize myself with the design and
20 their intent."

21 A Yes.

22 Q That line is identical in the September
23 22nd letter. Correct?

24 A Yes.

25 Q September 3rd, the next line reads, "At

1 the start of the work I will conduct a
 2 pre-construction meeting with the contractor, the
 3 major subcontractors and your staff to ensure
 4 everyone's awareness of safety concerns, the work
 5 schedule and any issues that should be discussed
 6 impacting the project."
 7 A Yes.
 8 Q Would you agree with me that that line is
 9 absent from the later letter?
 10 A Yes, I would.
 11 Q So the next line on the earlier letter
 12 says, "During construction, I will visit the site
 13 weekly to meet with the construction team to discuss
 14 any issues or concerns and to observe the status of
 15 the work."
 16 A Yes.
 17 Q The line in the September 22nd letter is
 18 similar but slightly different. It reads, "During
 19 construction, I will visit the site on a weekly
 20 basis to observe and document the status of the
 21 work."
 22 A Yes.
 23 Q Next line on the September 3rd letter
 24 reads, "I document these meetings with photographs
 25 and a field report of the items discussed."

1 A Yes.
 2 Q That line is missing from the later
 3 letter, is it not?
 4 A Yes.
 5 Q Going back to the September 3rd letter,
 6 "When pay applications are submitted, I will review
 7 them for compliance with the work to ensure the
 8 percentage of work complete is in accordance with
 9 the percentage of the costs being requested."
 10 A Yes.
 11 Q That line is also absent from the later
 12 letter, is it not?
 13 A Yes.
 14 Q And then the September 3rd letter goes to
 15 the next paragraph, but the September 22nd letter
 16 goes on to say, "After each site visit, I will
 17 prepare a field report listing the general status of
 18 the work and any items discussed on site with the
 19 contractor. Per our discussion on September 21,
 20 2010, there will not be a need to review and approve
 21 monthly applications for payment."
 22 A Correct.
 23 Q So having compared those two paragraphs
 24 line by line, you would agree with me that the scope
 25 of work being proposed is somewhat different on

1 September 22nd than it was initially on September
 2 3rd?
 3 A I would agree.
 4 Q And would you have any reason to disagree
 5 with Mr. Freeman's statement that there was a
 6 meeting with you on September 21, 2010?
 7 A No.
 8 Q Do you recall anything about that
 9 meeting?
 10 A No.
 11 Q Do you recall meeting with him at any
 12 point between September 3rd and September 22, 2010,
 13 to discuss exactly what it was you were retaining
 14 him to do?
 15 A Well, once again, I remember him. I
 16 remember having conversations with him. I remember
 17 meeting him. And when I read these things, I
 18 remember discussions with him. Specifics, I can't
 19 say I remember specifically meeting face to face or
 20 talking to him on the phone between September 3rd
 21 and September 22nd, but I will say, yes, I'm sure I
 22 did.
 23 Q Would it be a fair statement to say that
 24 based on meetings or negotiations with you his
 25 initial proposed scope of work was dialed back to

1 something less?
 2 A Yes, I would agree with that.
 3 Q He was not retained to approve pay
 4 applications. Correct?
 5 A Correct.
 6 Q Who did approve pay applications?
 7 A That probably would have been done by a
 8 board member.
 9 Q If I told you that your signature was on
 10 pay app approvals, would that refresh your
 11 recollection?
 12 A Well, I would have approved them after
 13 being told I could approve them by a board member,
 14 whether it be verbally or what. But, yes, I'm not
 15 surprised.
 16 Q Speaking of the board, I meant to ask you
 17 this earlier. Did Gary Freeman ever interact
 18 directly with the board, or was it always through
 19 you?
 20 A I honestly don't know, but it would not
 21 surprise me if it was only through me. But I don't
 22 know.
 23 Q I'll represent to you that I've seen
 24 nothing in writing in the way of meeting minutes
 25 that reflects him having dealt with anybody but you.

1 A Right.

2 Q I'm going to show you -- For some reason,
3 I only have one copy of this. But I'm going to show
4 you a document bearing Mr. Freeman's letterhead that
5 says Professional Services Agreement. This will be
6 149.

7 A I have seen it, and I signed it.
8 (Exhibit No. 149 marked for
9 identification.)

10 BY MR. BARFIELD:

11 Q Do you recall it?

12 A Not specifically do I recall it, but I am
13 the only person that is there to receive these
14 things. And with board approval, whether it be
15 verbal or otherwise, I signed them.

16 Q Would you agree with me that that
17 document reflects the terms and conditions of your
18 contract with Mr. Freeman?

19 A I would, yes.

20 Q And when I say Mr. Freeman, I want to
21 make sure that we're on the same page. Gary Freeman
22 individually is a defendant in this case. Gary
23 Freeman Architect, Inc., his company, is also a
24 defendant in this case. I'll represent to you that
25 in the complaint that's been filed in this case no

1 mind the contract with Gary Freeman Architect, Inc.,
2 was a contract with Gary Freeman?

3 A I would have to assume so.

4 Q Now, the terms and conditions outlined in
5 that Professional Services Agreement don't address
6 specifically what it is he was being hired to do?

7 A No.

8 Q Would you agree with me that what -- that
9 the last written word on what he was being hired to
10 do, as far as you know, is in the September 22, 2010
11 letter?

12 A As far as I know, yes.

13 Q Let me show you another document that
14 will just take hopefully a second to address.

15 (Exhibit No. 150 marked for
16 identification.)

17 BY MR. BARFIELD:

18 Q I don't know if this has already been
19 made an exhibit at some point along the way. I
20 apologize if I'm double marking something. I marked
21 this as 150. This is an AIA Standard Form Contract
22 Between Owner and Contractor, signed by Bob Wiggins.
23 I'm going to ask you if you recall that document?

24 A I'm sure I've seen this before.

25 Q Do you know whose handwriting that is on

1 distinction is made between work done by Mr. Freeman
2 individually or work done by his entity.

3 When you executed that contract with Gary
4 Freeman Architect, Inc., did you distinguish between
5 the individual and the company in your mind?

6 A No.

7 Q So in your mind, Gary Freeman, the
8 individual, and Gary Freeman, the company, were the
9 same thing?

10 A I would not even have thought to think
11 that. I knew that he worked alone. So as far as
12 thinking about him, the company and him the
13 individual, that's not my thought process.

14 Q So whatever terms and conditions in that
15 contract in your mind that would apply to the
16 company, you would hold Mr. Freeman individually to
17 those terms as well. Correct?

18 A See, I don't know how to answer that,
19 because I've never been in a lawsuit before. I
20 don't know legal things. I don't think about them
21 separately or as one. So I don't know how to answer
22 that.

23 Q Well, I'm asking you as a party to the
24 contract or at least a representative of a party to
25 the contract. I just want to make sure that in your

1 the first page?

2 A This one (indicating)?

3 Q Yes.

4 A It kind of looks like the same
5 handwriting as Bob Wiggins, Carolina Concrete.

6 Q Somebody has handwritten on the first
7 page of that document that Gary Freeman is the
8 architect for purposes of that contract. Correct?

9 A Correct.

10 Q If you look at that contract, it
11 contemplates that the architect is performing design
12 services, but that is not the case. Correct?

13 A That's correct.

14 Q Gary Freeman never signed a contract to
15 perform design services --

16 A He did not.

17 Q -- on this job. And Gary Freeman is not
18 a signature to that AIA contract, is he?

19 A He is not.

20 Q Do you recall Mr. Freeman taking issue
21 with being referred to as the architect, defined
22 term, when he saw that contract?

23 A I don't know.

24 Q I want you to look at paragraph four in
25 Exhibit 133. This is an e-mail from Mr. Freeman to

1 you dated November 12, 2010. Could you read that
2 out loud, please?

3 A Out loud? No. 4?

4 Q Yes.

5 A "The AIA contract that I received
6 yesterday is not dated, and the copy I received was
7 not signed by a representative of the regime. Is
8 there a signed copy? I am listed as the architect.
9 That is not true as there was no original design
10 architect. I am, however, providing architectural
11 services in the form of limited construction
12 administration per my agreement with the regime
13 initiated by me on 9/21/10."

14 Q Do you disagree with anything in that
15 paragraph?

16 A I do not.

17 Q I'm going to try and save us a little
18 time. I know that earlier Mr. Kelly asked you a
19 series of questions about the selection of the
20 windows during the period of time that Mr. Freeman
21 was involved. Do you recall those questions?

22 A I recall being asked questions.

23 Q Fair enough. Do you recall him asking
24 some questions about Mr. Freeman's role in that
25 process?

1 A Yes.

2 Q Would you agree with me that Mr. Freeman
3 raised some concerns about the windows that had been
4 selected for that scope of work?

5 A Yes.

6 Q And would you also agree with me that
7 acting on those concerns you, Mr. Wiggins and
8 ultimately an engineer by the name of Broadway
9 undertook to investigate the appropriateness of
10 those windows?

11 A Yes.

12 Q And ultimately that group of individuals,
13 including yourself, were satisfied that the windows
14 were satisfactory to install?

15 A Yes.

16 Q Ultimately that was reported back to
17 Mr. Freeman?

18 A I would assume so.

19 Q You would also agree with me that
20 Mr. Freeman was told that he was not to concern
21 himself with anything related to the sliding glass
22 doors?

23 A I know that I was shown a letter earlier
24 that I sent saying that -- I think it was the one
25 that said that we were considering it maintenance,

1 so he did not need to act further.

2 Q To the best of your recollection, when
3 the work started in 2010, what was Gary Freeman out
4 there doing?

5 A Well, the whole idea to me to hire him to
6 begin with was to oversee the work being done to
7 ensure that it was done properly and appropriately.
8 That was my whole idea. So in my mind that's what
9 his purpose was.

10 Q How was he supposed to know if the work
11 was being done appropriately if he had nothing to
12 show him what the work was?

13 MR. RAMSEY: Object to the form.

14 A I'm supposed to try to answer that?

15 BY MR. BARFIELD:

16 Q Please.

17 A Well, once again, I have to say that as a
18 professional architect, knowing that they were using
19 a specific system, that he would know what was
20 required and how to do it. Maybe I was wrong, but
21 that was my thought process.

22 Q Well, we've already established that his
23 letter of September 22, 2010, sets forth what it is
24 that he was being paid to do. Can you look back
25 over that letter and tell me what line in that

1 letter or what part of that letter says he was
2 supposed to do what you just described?

3 A Well, there may be something in here
4 further that refutes that. But it says, "Most of my
5 work involves water intrusion and the investigation
6 of its causes and effects. A majority of the
7 failures I see are a result of either improper
8 design or improper installation of the components of
9 the building envelope. Many of these problems can
10 be avoided with the involvement of a design
11 professional during construction."

12 So I could be wrong, but to me that says
13 I know that if it's not done properly you can have
14 leaks, and I can identify improper procedures.
15 That's why I would think that if he was there and he
16 looked at the work they were doing, he would
17 instantly know that if they weren't putting in
18 backer rod, that they were wrong. I mean, to me,
19 that was the whole idea of him being there. And, to
20 me, that's what he was going to do and what he did.

21 Q But that's not the part of the letter
22 that says what he's agreeing to do, is it?

23 A Why don't you just tell me what you
24 understand out of this and I'll try to understand
25 it.

1 Q The paragraph that we compared line by
2 line with the earlier letter, that says what he's
3 being hired to do, doesn't it?

4 A He says, "Each week, I estimate spending
5 from two to four hours with the site visit and
6 preparing and issuing the field report." And the
7 field report to me is to tell me what he saw and any
8 problems that he might have envisioned. Isn't that
9 what a field report is?

10 Q You tell me. Mr. Freeman did submit
11 field reports, did he not?

12 A Yes, I believe so. I never did say he
13 didn't do what I asked him to do. You were the one
14 who was suggesting that I was out in left field.

15 Q So you believe Mr. Freeman did do what he
16 was hired to do?

17 A I would not be wanting to say that he did
18 not. Whether he did it efficiently and
19 appropriately and timely, I would not say. But as
20 far as I'm concerned, he was hired to look over the
21 shoulders and make sure they weren't doing anything
22 wrong.

23 Q With regard to the frequency of his
24 visits out there, he was to be out on that job
25 site --

1 illness out of state. He was gone a lot. A lot of
2 our conversations and correspondence were done on
3 the phone. When he would come back into town,
4 sometimes the crews had already quit for the day,
5 and Gary would be out there going around behind
6 them. So, yes, I think he did the best he could.

7 Q He did, in fact, make some observations
8 about concerns he had?

9 A Yes, he did.

10 Q Despite his concerns, the work progressed
11 as it was originally?

12 A I could be wrong, but the way I remember
13 it --

14 MR. RAMSEY: Object to the form.

15 A -- his field reports were -- which is
16 typical of field reports, but this was a very short
17 project. And his field reports would come in, and
18 the work -- considerable work had been done since
19 before the report was received, and so it just
20 continued on. So, yes, it continued on as they had
21 done in previous contracts because they just kept
22 moving forward, even though he did bring up
23 questions, yes.

24 BY MR. BARFIELD:

25 Q Going back to Exhibit 133, this was the

1 A Each week.

2 Q For how long does he estimate?

3 A Two to four hours.

4 Q You would agree with me that even if his
5 scope of work was, as you say it was, to look over
6 the shoulder and report anything wrong, that his
7 ability to do that was relegated to the time that he
8 was out there. Correct?

9 A Yes.

10 Q So crews were out there five days a week
11 at that time?

12 A Yes.

13 Q And they are working full days. Correct?

14 A Yes, I think so.

15 Q If your expectation of Mr. Freeman was
16 that he was supposed to catch everything that was
17 going wrong, how was he supposed to do that in two
18 to four hours a week on a job of that size?

19 A That was his determination, not mine. I
20 told him what I needed, and this is what he came up
21 with that he was willing to do or could do or that
22 we could pay for or whatever.

23 And I will tell you this. I think he did
24 fine when he was there. But there was a period
25 of -- During this period of time, he had a family

1 November 12, 2010 e-mail, if you look at paragraph
2 three, would you agree with me that Mr. Freeman
3 raised a concern when he discovered that the work
4 that was being done in 2010 was being conducted
5 under a permit that was pulled in 2003?

6 A Yes, he did.

7 Q Do you remember discussing that with
8 Mr. Freeman?

9 A I don't specifically remember discussing
10 it with Mr. Freeman. I certainly remember
11 discussing it with Mr. Wiggins.

12 Q And what was the take-away from that
13 discussion?

14 A Mr. Wiggins continued to say that he felt
15 it was a continuing part of a project, not a new
16 project, but a continuation of what he had done
17 before. Therefore, he felt that he could work under
18 the same permit, and that was less than the 50
19 percent that would require bringing it up to the
20 building code of today. And he believes that.

21 Q And you were satisfied with that?

22 A I was concerned about it, but it was
23 almost over. I didn't know what else I could do.

24 Q Do you recall responding to that concern
25 that Mr. Freeman raised?

1 A Responding to Mr. Freeman?
 2 Q Yes.
 3 A I'm sure we talked about it, yes. I
 4 don't remember, no. But, yes, I'm sure we talked
 5 about it, because it upsets me very much that we
 6 could have been doing something that was
 7 inappropriate as far as the building department of
 8 the Isle of Palms would think.
 9 Q Do you remember Mr. Freeman expressing
 10 surprise that the work was being done that way
 11 independent of this e-mail?
 12 A Surprised at what?
 13 Q That the work in 2010 was being done
 14 pursuant to a permit that was pulled in 2003?
 15 A Yeah, he was surprised. I was shocked.
 16 Q But what Mr. Wiggins told you about his
 17 interpretation of the code satisfied you
 18 sufficiently to allow the work to complete?
 19 A I can't say that it satisfied me at all.
 20 But the work was about finished, and I just went to
 21 the board and told them this is our predicament.
 22 And by then he was about finished.
 23 Q Did you have Mr. Freeman come and talk to
 24 the board to talk more specifically about why that
 25 would be a concern?

1 A I don't think so. My board is basically
 2 all out of state. They only come in, you know --
 3 required to come in twice a year. I don't know that
 4 any of them actually met Mr. Freeman.
 5 Q Do you remember having any conversations
 6 with Mr. Freeman about why it would not be a good
 7 idea for him to speak with any of the town officials
 8 about that issue?
 9 A I don't remember any conversation about
 10 that. Did he have a conversation with them?
 11 Q Not that I'm aware of. Do you not
 12 remember telling Mr. Freeman that the relationship
 13 between the town and Shipwatch was less than ideal
 14 and it would be best not to get the town involved?
 15 A I tell everybody the situation between
 16 the city building inspector and Linda Jernigan is
 17 anything but good, and it's never a good idea to
 18 draw attention to the fact that they are dealing
 19 with her. So I probably did say that. I don't
 20 think I would ever say don't contact them. I'm just
 21 saying we're asking for trouble, because they don't
 22 like me down there.
 23 Q Why are they not Linda Jernigan fans down
 24 there?
 25 A Two reasons. Number one, which is

1 another reason why this is embarrassing at the time
 2 for me, I don't allow any homeowner contractor to do
 3 any work without getting a building permit. I
 4 insist and make them do it, even though it may not
 5 be something the city requires. I make them do it
 6 anyway. So if I make everybody else go get a
 7 permit, why wouldn't I get one myself?
 8 The other reason that I'm not popular
 9 down there was beach erosion. We placed our sand
 10 bags in a logical place, but it's not the place that
 11 they wanted them placed, and they sued us. And
 12 being the representative, I had to go to court and
 13 we won.
 14 Q Approximately when was that? What
 15 year?
 16 A 2008, 2009.
 17 Q With regard to the field reports that
 18 Mr. Freeman was drafting during this time frame,
 19 were you the person that he was submitting those
 20 reports to?
 21 A I was a recipient, yes.
 22 Q And what was it that you did with reports
 23 when you received them?
 24 A I would share them with the board and
 25 just file them.

1 Q Did you read them?
 2 A Yes.
 3 Q Did you look at the photographs?
 4 A Yes.
 5 Q To the extent that a given report raised
 6 any particular concern, what would you do about that
 7 issue?
 8 A What I do is pass on any concerns I have
 9 to the board of directors, building committee, if
 10 not the whole board. And I would not be afraid to
 11 ask Bob Wiggins.
 12 We trusted Bob Wiggins with everything we
 13 did at Shipwatch. So it would not be uncommon for
 14 me to go to Bob and say what is this.
 15 Q So in that circumstance you would go
 16 directly to Bob because you had that comfort level
 17 with him?
 18 A Because of that concern, yeah.
 19 Q Were you satisfied with the amount of
 20 photographic documentation that Mr. Freeman provided
 21 with his weekly field reports?
 22 A Yes.
 23 Q Did you look at the photos yourself?
 24 A Yes.
 25 Q Did you ever share the photos with

1 Mr. Wiggins?
 2 A Wasn't he copied on the field report?
 3 Q Actually, he was, you're right. So you
 4 didn't have to. Mr. Wiggins saw the photos. Any
 5 concerns by Mr. Freeman would have been raised
 6 directly to Mr. Wiggins?
 7 A Yes.
 8 Q At the same time they were raised to you?
 9 A Yes.
 10 Q Did you use Mr. Freeman's field reports
 11 to provide you with sufficient information to
 12 approve the pay apps?
 13 A I don't know. I don't know. I don't
 14 remember. I don't even remember how many pay apps
 15 there were. Was there more than one or two? It
 16 just all goes to timing.
 17 Q Do you know whether or not Mr. Freeman
 18 was ever provided with the manufacturer's
 19 installation instructions for the Durock system?
 20 A I'm not sure, but I'm thinking that he
 21 printed it off himself from the internet.
 22 Q What makes you think that?
 23 A It just seems like I remember that.
 24 Q Did you ever communicate to Mr. Freeman
 25 that you were dissatisfied with the amount of time

1 your deposition is being kept open because nobody
 2 has had an opportunity to review all 70,000
 3 something documents. I've tried my best but have
 4 not made it through all of them.
 5 I'm going to try and make today's
 6 questioning fairly brief to try and enable some of
 7 the other folks in the room to go forward. I know
 8 you've heard that before. I'm going to shoot for an
 9 hour today.
 10 If you need to take a break at any time,
 11 go ahead and let me know.
 12 As we continue today, if I ask you a
 13 question and you answer my question, is it fair for
 14 me to assume that you've understood my question and
 15 that you've answered it truthfully?
 16 A The truthful part, yes.
 17 Q Well, part and parcel of that, I don't
 18 want you to answer any question of mine that you
 19 don't understand.
 20 A I understand.
 21 Q So if you do not understand one of my
 22 questions, simply ask me to rephrase it and I'll
 23 attempt to do so. Okay?
 24 A Okay.
 25 Q How many years did you work with my

1 he was spending out there?
 2 A I don't think so.
 3 Q To the best of your knowledge, did
 4 Mr. Freeman visit the job site with the frequency
 5 that he proposed in his September 22, 2010 letter?
 6 A I don't even know whether he did or not.
 7 I just remember that he was out of town with his
 8 parents, which is anybody's priority, and I
 9 understood that and I knew that. He would come in
 10 when he could. And he would do his reports based on
 11 what he could see. How can you not say you're
 12 satisfied, because I know where my priority would
 13 have been.
 14 MR. BARFIELD: I think that's all I
 15 have for the time being. We are leaving it open.
 16 THE WITNESS: Well, apparently I've
 17 moved in.
 18 (Recess taken.)
 19 EXAMINATION
 20 BY MR. WINTON:
 21 Q Ms. Jernigan, my name is Tyler Winton.
 22 I'm an attorney at Carlock upstairs. And I'm here
 23 today on behalf of Bob Sisnroy and Sisnroy
 24 Engineering.
 25 Everybody said this, but I'll repeat that

1 client? When I refer to my client, obviously Bob
 2 Sisnroy or Sisnroy Engineering.
 3 A Personally, I came in 2005. So at least
 4 up until 2010.
 5 Q You believe that Mr. Sisnroy was involved
 6 out at Shipwatch until 2010?
 7 A Well, I won't say how long. I'm just
 8 guessing. But I know my first involvement was with
 9 2005, and I don't remember when it ended.
 10 Q Yesterday I was happy to hear that you
 11 said that my client was an excellent engineer.
 12 However, there are a couple of things that I just
 13 need to confirm.
 14 During the time that you worked with
 15 Mr. Sisnroy, did you find him to be trustworthy?
 16 A Yes.
 17 Q Did you find him to be professional at
 18 all times?
 19 A Yes.
 20 Q Did you find him to be thorough in his
 21 work and services that he provided?
 22 A Oh, yes.
 23 Q You kind of rolled your eyes. Why was
 24 that? Do you consider him to be very nitpicky --
 25 A Very detailed. Very detailed.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM	)	
ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	Case No.:
-versus-	)	2012-CP-10-3858
	)	
CAROLINA CONCRETE SYSTEMS,	)	
INC., et al.,	)	
	)	
Defendants.	)	
OSCAR MENDIONDO, Individually	)	
and as representative of a	)	
class of similarly situated	)	
owners of condominium units in	)	
the horizontal property regime	)	
known as SHIPWATCH CONDOMINIUMS,	)	
	)	
Plaintiffs,	)	
	)	
-versus-	)	
	)	
CAROLINA CONCRETE SYSTEMS,	)	
INC., et al.,	)	
	)	
Defendants.	)	

THE DEPOSITION OF FRED TROMBINO was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 10:00 a.m. on Friday, the 18th day of July 2014, at the offices of Carlock Copeland, 40 Calhoun Street, Suite 400, Charleston, South Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 BY MR. COBB:

2 Q Before 2011, the board had decided that
3 it was going to remove all the sliding glass doors?

4 A Yes.

5 Q The board had decided that it was going
6 to remove all of the EIFS off the buildings.

7 Correct?

8 A Yes.

9 Q And the board wanted to do those over a
10 number of years because of the concern about cost
11 and occupancy?

12 A Correct.

13 Q And those two considerations primarily
14 drove the decision not to do all of that work at
15 once at some point in 2009, 2010, 2011. Correct?

16 A Yes.

17 Q That's the work that's being done now as
18 part of these 2013/2014 repairs. Correct?

19 A That is correct.

20 Q When did you first learn that there was
21 an issue at Shipwatch about the synthetic stucco or
22 EIFS?

23 A When I was on the board the first time.

24 Q So sometime in the 2005 to 2007 time
25 period you learned as a board member that synthetic

1 stucco was a problem for Shipwatch?

2 A That is correct.

3 Q What did you learn?

4 A I learned that the synthetic stucco was a
5 problem, not the right application for a coastal
6 environment.

7 Q Who told you that?

8 A I believe the insurance company told us
9 they were charging us a premium for insurance for
10 the EIFS.

11 Q Did you also get told at that point in
12 time about issues with water intrusion and EIFS?

13 A Yes.

14 Q What were you told about that?

15 A We were told that EIFS has a tendency
16 to -- water tends to get behind the EIFS, rotting
17 the studs, causing failure.

18 Q Did the board hire anyone in 2005, 2006
19 or 2007 to inspect the buildings to see if there
20 were problems to the structure because of EIFS or
21 any water intrusion to the building because of EIFS?

22 A Not that I'm aware of.

23 Q And why not?

24 A We were in the process of removing the
25 EIFS, replacing studs, probably the reason.

1 costs associated with replacing the original
2 synthetic stucco that was installed on the
3 buildings?

4 A Yes.

5 Q Would you agree with me that none of
6 these defendants have responsibility for the costs
7 associated with repairing or replacing the metal
8 roof which the insurance company paid Shipwatch
9 \$500,000 for?

10 A Yes.

11 Q Would you agree with me that none of
12 these defendants have responsibility for the cost
13 associated with the remediation and recoating of the
14 balcony ceilings on the breezeways on the street
15 side of the buildings?

16 A I don't know.

17 Q How long has the issue about the
18 condition of the ceilings in the breezeways on the
19 street side been present at Shipwatch?

20 A It's been a constant problem.

21 Q Since when?

22 A Since I've been on the board.

23 Q Since 2005?

24 A At least.

25 Q And what were those concerns about those

1 ceilings?

2 A Peeling.

3 Q Since 2005, has Shipwatch ever paid for
4 any type of repairs or replacement or repainting of
5 those breezeway ceilings?

6 A 2005? I don't recall if we painted them
7 during that time.

8 Q Would you agree with me that none of
9 these defendants have any responsibility for the
10 costs associated with the installation of the new
11 handrails at the buildings?

12 A Yes.

13 Q When the homeowners or the board decided
14 to move forward with the curtain elevator repairs in
15 2012, how were those repairs funded?

16 A Through assessment.

17 Q Do you recall the amount of the
18 assessment?

19 A No.

20 Q When the repairs were decided with
21 regards to building C and D and then now A and B
22 with 2013/2014, when was that first communicated to
23 the homeowners?

24 Let me back up. Were you on the board
25 that decided to take the issue to the homeowners or

1 Q Did it leak after Mr. Wiggins performed
2 repair work?

3 A No.

4 Q Is there currently any water intrusion
5 into your unit?

6 A No.

7 Q I'm going to hand you a document. This
8 is Jernigan Exhibit No. 96. If you'll take a look
9 at that, the second page for me. You may want to
10 take a look at the whole thing, because I'm going to
11 ask you if you know who wrote this.

12 A This looks like I might have wrote this.

13 Q And this would have been written while
14 you were a board member?

15 A Yes..

16 Q If I look on the second page, it says
17 sliding glass doors.

18 A Yes.

19 Q And it reads, "It's been well known by
20 past boards that there's been a leakage problem with
21 a good number of sliding glass doors."

22 How far back was the board aware that
23 there was a leakage problem with the sliding glass
24 doors?

25 A How far back? As far back as when I

1 first got onto the board in 2005. That's when I
2 became aware there was sliding glass door issues.

3 Q Because you said past boards. I didn't
4 know if you had talked to any previous board members
5 that informed you, hey, this has been going on
6 for --

7 A No. Just me being a full-time resident
8 at Shipwatch, I would have conversations with Linda,
9 and she would let me know that we've had problems
10 with sliding glass doors.

11 Q Did she let you know about the problems
12 with sliding glass doors before you became a board
13 member?

14 A No.

15 Q So you wouldn't know -- you didn't know
16 about any problems until 2005 when you became --

17 A That's correct.

18 Q It says here there are 16 doors that need
19 to be replaced as soon as possible. Do you know how
20 or why those 16 doors were the ones that needed to
21 be replaced as soon as possible as opposed to the
22 other doors that may have been leaking?

23 A Well, usually we would identify it as a
24 door that needed to be replaced as soon as possible
25 if it was leaking.

**Deposition of
Arnold E. Schaewe**

July 21, 2014

Shipwatch Condominium Association, Inc. v. Carolina Concrete Systems, Inc., et
al.

Case Number: 2012-CP-10-03857&58



513-233-3000
877.233.4403
Fax: 513-233-2310
depo@elitereportingagency.com

www.elitereportingagency.com

1 area, or did you do any investigation as to where
2 the water was coming from?

3 A. I in -- I investigated the sliding
4 door. And I thought it might be a leak at the
5 lower -- lower joint in the door. And I caulked
6 it.

7 Q. Why did you think it was a problem with
8 the joint at the bottom of the door?

9 A. That -- it -- that's when the original
10 doors at Shipwatch -- it was installed in 1990
11 after Hugo, so it was rather old. And I thought
12 the caulk that was there was either missing or
13 leaking.

14 Q. Where was this caulk located?

15 A. At the -- the bottom of the door has a
16 catch pan. And then the left side -- the left
17 side of the door, which is part of the door
18 frame, butts into that.

19 And so it was the lower -- the lower
20 left corner of the door.

21 Q. Is that where it butts up against the
22 cladding, the exterior cladding, the stucco?

23 A. No. It actually butts up against the
24 wood stud at the -- the vertical wood stud that
25 the door is mounted to.

www.elitereportingagency.com
5132333000

1 work that we did at that time on -- on the ocean
2 side walls and the two end walls on each
3 building.

4 Q. Do you know specifically why
5 Mr. Wiggins suggested that work? What did he
6 find that would have suggested that you all
7 replace cladding on the end walls on the ocean
8 side?

9 A. Well, we knew we had -- we knew we had
10 leakage problems in various parts of the building
11 on the -- on the ocean side through -- through
12 doors. He discovered that we had leakage due to
13 construction of the partition walls on the
14 oceanfront balconies.

15 We had -- we knew we had water
16 intrusion in the bay window areas on the first
17 three floors of the end walls. So we knew we had
18 problems of water intrusion from the exterior at
19 Shipwatch.

20 And we were being advised by
21 Mr. Wiggins on what we could do about that, so --

22 Q. And is that then what led to removing
23 the stucco on the end walls and the ocean side --

24 A. Yes, exactly.

25 Q. -- and various areas?

www.elitereportingagency.com
5132333000

1 A. Well, we found rusted studs -- you have
2 to remove the cladding to find rusted studs. So
3 when we removed -- when we removed the original
4 EIFS cladding, we found many rusted studs.

5 Q. Was that on both the end walls?

6 A. Both -- both the ocean side and end
7 walls.

8 Q. Was this done on all four buildings?

9 A. Yes.

10 (Off the record.)

11 BY MS. SMITH:

12 Q. Mr. Schaewe, just to clarify, when
13 you're talking about the removal of the synthetic
14 stucco from the end walls and the ocean side and
15 the corroded and rusted metal stud framing that
16 we're just speaking of, you're talking about in
17 the 2003, 2004 time frame, approximately?

18 A. If -- if that's what you're saying.
19 Again, I don't recall the exact dates of that.
20 But I'm certain you have the record there, so if
21 it -- if you say it's 2003, 2004, then it's 2003,
22 2004. So --

23 Q. Okay. Do you know at that point if
24 there was any issue with the deck sloping?

25 A. With -- with the what?

www.elitereportingagency.com
5132333000

1 Q. Same type of question regarding the
2 storefront windows.

3 There's a number of storefront windows
4 that have not been replaced and that are original
5 to the construction of the building in the 1980s.

6 Should Mr. Wiggins be responsible for
7 the replacement and the cost to replace those
8 specific original windows?

9 MR. FLYNN: Same objection.

10 A. That one's a little bit harder for me
11 to answer. If the cladding around the windows --
12 if the cladding around the windows was replaced,
13 then the answer is yes.

14 If it wasn't, then the answer is no.

15 BY MS. SMITH:

16 Q. Okay. I don't understand your answer
17 in the fact that I'm talking about the windows
18 themselves, the cost associated with removing and
19 replacing those original windows.

20 Should Mr. Wiggins be held responsible
21 for that cost of replacement?

22 MR. FLYNN: Object to form.

23 A. My answer is no.

24 BY MS. SMITH:

25 Q. The handrails that are being replaced

www.elitereportingagency.com
513.233.3000

1 during the current repairs, are those handrails
2 original to the construction of the buildings in
3 the 1980s?

4 A. No. They were 1990 vintage.

5 Q. They were installed, as you said, in
6 the 1990s --

7 A. In 19- --

8 Q. -- should Mr. Wiggins -- I'm sorry?

9 A. In -- in 1990. That was a Hugo piece
10 of work.

11 Q. Okay. Another post-Hugo repair.

12 Should Mr. Wiggins be responsible for
13 the removal and replacement of the handrails
14 in this litigation?

15 A. My answer is no.

16 Q. Do you have a current contract yet for
17 the buildings A and B?

18 A. Do we have a current contract for the
19 work on -- the remediation work on --

20 Q. On buildings A and B?

21 A. No, we do not.

22 Q. Okay. Have you received bids for the
23 repair work on A and B?

24 A. Yes.

25 Q. And who have you received bids from?

www.elitereportingagency.com
513.233.3000

1 sliding glass doors were leaking in various
2 units; is that not correct?

3 A. Well, I believe it said at this point
4 in time -- I think -- I believe it was Carl
5 working with Mr. Wiggins. At that point it says,
6 had identified 15 as a problem.

7 Q. And from that point forward, did you
8 all continue to inspect the sliding glass doors
9 for leaks?

10 A. Yes.

11 Q. And, additionally, you had homeowners
12 reporting that they had leaking sliding glass
13 doors?

14 A. Yes.

15 Q. And throughout the years after 2006,
16 the board decided to replace certain sliding
17 glass doors based on those inspections and
18 complaints by homeowners?

19 A. Yes.

20 Q. And each year, would the board
21 determine how much it could afford as far as the
22 number of doors that it could replace?

23 A. I believe I left the board after 2007,
24 I believe. So I do not know what discussions the
25 board had between my leaving the board and my

www.elitereportingagency.com
513.233.3000

1 coming back to the board in 2012.

2 Q. Fair enough. But during that time
3 period, additional doors were replaced every
4 year, is that not correct?

5 A. Yes. As I mentioned earlier, I believe
6 we stand somewhere around 160 right now.

7 Q. Okay.

8 (Off the record.)

9 (Lunch recess was taken from 12:30 to
10 1:48.)

11 BY MS. SMITH:

12 Q. Okay. Mr. Schaewe, we're back on the
13 record. And I just have some few short questions
14 regarding some of the documents that you produced
15 this morning to us.

16 Specifically, I am looking at what's
17 been Bates stamped AS0297. Do you have those
18 documents in front of you?

19 A. No, I don't have those with me.

20 Q. You don't have any of those
21 documents?

22 A. They're out in the car, in fact.

23 MS. SMITH: Are we all going to be
24 asking him about the documents?

25 MR. ROOT: His documents?

www.elitereportingagency.com
5132333000

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

THE COURT OF COMMON PLEAS

SHIPWATCH CONDOMINIUM
ASSOCIATION,

Plaintiff,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

OSCAR MENDIONDO, Individually
and as representative of a
class of similarly situated
owners of condominium units in
the horizontal property regime
known as SHIPWATCH CONDOMINIUMS,

Plaintiffs,

-versus-

CAROLINA CONCRETE SYSTEMS,
INC., et al.,

Defendants.

THE DEPOSITION OF GREG ISAACS was taken as a witness on behalf of the Defendants, pursuant to South Carolina Rules of Civil Procedure, at 9:30 a.m. on Monday, the 28th day of April 2014, at the offices of Sutton-Kennerly & Associates, 4651 Charlotte Park Drive, in the City of Charlotte, State of North Carolina, before Janice O. Darby, Registered Professional Reporter and Notary Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

A P P E A R A N C E S

For the Plaintiff:

ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. PATRICK FLYNN

For the Defendants:

RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MS. SAMIA NETTLES

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MS. KATHERINE MIARS

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. DAVID S. COBB
MS. JENNIE SMITH

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. STACEY CANADAY

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

A P P E A R A N C E S (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MS. D. SUMMERS CLARKE

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. R. BRITTON KELLY (by phone)

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL A. EARHART

KERNODLE ROOT COLEMAN
Attorneys at Law
P.O. Box 13897
Charleston, SC 29422
BY: MR. DAVID A ROOT

Reported by:

MS. JANICE O. DARBY
763 Gate Post Drive
Mt. Pleasant, SC 29464
(843) 814-7666

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 curtain walls.

2 BY MR. COBB:

3 Q So you've got the January 11, 2012 report
4 and the January 25, 2012 addendum?

5 A Which is signed by Tim Cook.

6 Q What's the next one?

7 A Proposal for performing additional
8 evaluation of direct-applied exterior finish systems
9 and providing preliminary schematic design services,
10 February 10, 2012.

11 Q Signed by?

12 A Jeff Miller and myself.

13 Q The next one?

14 A The next one is a draft. I couldn't find
15 our hard copy of the report of evaluation of
16 direct-applied exterior finish systems. My draft
17 here is dated March 27, 2012. I believe the final
18 sealed copy was early April, but I couldn't locate
19 our hard copy of that.

20 Q Who signed that?

21 A Again, this is the draft, but no one
22 signed this draft. But it will be Jeff Miller and
23 myself for the final report.

24 Q Are there any other reports or documents
25 after April 2012?

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 A We are involved in the repairs going on
2 now, so it depends on how much you want to get into
3 those documents.

4 Q We are going to get into all of it.
5 What's the easiest way to get a copy of everything
6 that you've generated since that date?

7 I know we sent a subpoena, but one of the
8 things we're trying to do is verify that we've got
9 everything, because the production has been somewhat
10 stop and go, stop and go.

11 A I was under the impression that everybody
12 had everything.

13 Q Do you have a list? Is there a way for
14 you to get a list or a chart of what you've
15 generated since April of 2012?

16 A That would be a very extensive list. Are
17 you looking for just reports and proposals, or what
18 exactly are you looking for?

19 Q Anything in writing.

20 A Anything in writing. I mean, that pile
21 of papers is what we have. We're working on the
22 current repairs going on, and it's an ongoing
23 project, and there are a lot of field reports and a
24 lot of materials that should be included in the
25 documents.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.:
-versus-) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,)

-versus-)

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

THE CONTINUATION OF THE DEPOSITION OF GREG
ISAACS was taken as a witness on behalf of the
Defendants, pursuant to South Carolina Rules of
Civil Procedure, at 9:30 a.m. on Tuesday, the 29th
day of April 2014, at the offices of Sutton-Kennerly
& Associates, 4651 Charlotte Park Drive, Charlotte,
North Carolina, before Janice O. Darby, Registered
Professional Reporter and Notary Public in and for
the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MS. D. SUMMERS CLARKE

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. R. BRITTON KELLY (by phone)

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL A. EARHART

KERNODLE ROOT COLEMAN
Attorneys at Law
P.O. Box 13897
Charleston, SC 29422
BY: MR. DAVID A ROOT

Reported by:
MS. JANICE O. DARBY
763 Gate Post Drive
Mt. Pleasant, SC 29464
(843) 814-7666

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES

For the Plaintiff:
ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. PATRICK FLYNN

For the Defendants:
RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MS. SAMIA NETTLES

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MS. KATHERINE MIARS

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. DAVID S. COBB
MS. JENNIE SMITH

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. STACEY CANADAY
Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

INDEX

WITNESS	PAGE
ISAACS, GREG	
By Mr. Cobb	251
By Mr. Kelly	301
By Mr. Root	316
By Mr. Earhart	363
By Mr. Flynn	390
By Ms. Canaday	395
By Ms. Nettles	415
By Mr. Winton	418

EXHIBITS:	MARKED
FOR IDENTIFICATION	
No. 57 Drake Development Plan Elevations	256
No. 58 Curriculum Vitae	316
No. 59 4/5/12 SKA Report/DEFS	316

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

Page 251 1 GREG ISAACS 2 having been previously duly sworn, was called as a 3 witness herein and was examined and testified as 4 follows: 5 EXAMINATION 6 BY MR. COBB: 7 Q Good morning. I need to ask you a couple 8 of questions about the deck coating on the 9 breezeway. Were you there when the EIFS was removed 10 off the breezeway on the street side of the 11 building? 12 A Some of it, yeah. 13 Q Was there any resulting damage because of 14 the way the deck coating ended at the EIFS? 15 A There was corrosion on the metal studs 16 behind the EIFS. 17 Q And can you attribute that to the deck 18 coating? 19 A I'm not exactly sure whether -- the point 20 of entry where that water came in. 21 Q Any other issues with any damage observed 22 after the EIFS was removed? 23 A The corrosion, and I guess there was also 24 some black staining that we talked about 25 yesterday.	Page 253 1 elements in the facade adjacent to the windows. 2 Q How many of the windows that are being 3 replaced are original to the building? 4 A I'm not sure. Approximately most of the 5 breezeway windows. Approximately half of the 6 U-shaped bay windows. And I would have to look into 7 our field notes and photos to comment on the fixed 8 windows, how many of those were done. 9 Q So most of the breezeway windows, half of 10 the U-shaped windows and some portion of the fixed 11 windows are all original to the building? 12 A I believe so, yes. 13 Q Any idea of the total number of windows 14 that are being replaced? 15 A Not off the top of my head. I can look 16 it up. 17 Q How long will that take you to do? 18 A A couple of minutes. 19 Q If you don't mind, yeah, because I would 20 like to have a range of the number of windows being 21 replaced and the number that are original to the 22 building. 23 A For the four buildings, based on this 24 count we have 144 of the fixed windows, which are 25 about eight foot by three foot.
Page 252 1 Q Can you attribute the black staining at 2 all to the deck coating? 3 A I do not know the specific point of entry 4 of that water. 5 Q We stopped yesterday with the issue of 6 the removal of the sliding glass doors. I talked to 7 you about page 6 of your January 11, 2012 report, 8 item D, No. 2, item C, "New replacement fixed 9 windows are" -- The syntax is not comprehensible, 10 because it says, "New replacement fixed windows are 11 on installed on the first three floors of the ocean 12 side balconies." Do you see where I am? 13 A I do. 14 Q How should that be worded? 15 A I think that should probably read, New 16 replacement fixed windows have been installed on the 17 first three floors of the ocean side of balconies. 18 Q Is that all four buildings? 19 A I'm not sure. 20 Q What repairs are being done with regards 21 to any windows now? 22 A We are replacing all of the windows. 23 Q And what engineering theories support the 24 removal and replacement of all the windows? 25 A The tying-in of the waterproofing	Page 254 1 Q They are what? 144 of the fixed windows 2 are what? 3 A Total on the four buildings. 4 Q So that's the total number of fixed 5 windows? 6 A Yes, on the project. 7 Q And how many of those 144 fixed windows 8 are being removed? All of them? 9 A All of them. 10 Q And how many of the 144 are original to 11 the building? 12 A That's probably another note. I've got 13 totals here of each type. I would have to go 14 through -- 15 Q Let's do the totals and then we'll go ... 16 A Windows that are approximately four foot 17 by four foot, the total for all four buildings is 18 144. 19 Q Are these also fixed windows? 20 A These are sliding -- I'm sorry, 21 single-hung windows. Excuse me. They were 22 previously sliding. I believe we are installing 23 single-hung. 24 Then there are 32 small windows that are 25 approximately two foot by three and a half feet.

2 (Pages 251 to 254)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 And there are 32 total of those on the four
2 buildings.

3 Q And what are they being replaced with?

4 A They are being replaced with a
5 single-hung window.

6 And then on the U-shaped bay windows,
7 there are 24 total for the four buildings.

8 Q So there are no other windows other than
9 those four categories. Correct?

10 A Within -- I mentioned approximately four
11 foot by four foot windows. In our repairs we found
12 the breezeways were all one type at four foot by
13 four foot. A couple of those on the end walls were
14 a couple inches different. But in terms of getting
15 quantities, I grouped those together.

16 Q So if we do the math, whatever 144 plus
17 144 plus 32 plus 24, that's the total number of
18 windows?

19 A Yes.

20 Q Now, have you got notes that indicate how
21 many of the 144 eight foot by three foot fixed
22 windows were original to the building?

23 A I should.

24 Q Before we start talking about them, what
25 are the four pages that you pulled? What are those?

1 A Yes. Ocean elevation, sliding glass
2 doors, fixed windows and the bay windows.

3 Q Help me decipher what you've got here.

4 A Okay. Basically the N is for new, the O
5 is for old. There is an elevation -- ocean
6 elevation of each building. Subtotal on each page
7 for each building. And then building D -- The page
8 for building D has a total of those amounts for new
9 sliders, new fixed, old sliders and old fixed.

10 Q If we go to the fourth page, which is
11 labeled building D, the window counts are only for
12 the ocean side?

13 A Correct.

14 Q Do you have window counts for the other
15 three elevations?

16 A In terms of old versus new, I don't have
17 field notes on that. But all breezeway windows are
18 old windows. And to the best of my knowledge, all
19 the end wall windows, you know, not including the
20 U-shaped bay windows, on north and south elevations
21 are also new.

22 Q So all breezeway windows are old. All
23 end wall, not including the U-shaped, windows are
24 new?

25 A Yes.

1 A These are field notes taken from either
2 the ground or a balcony which are -- Basically I've
3 marked -- That's an elevation drawing of the
4 building, and I've marked whether it appears to be
5 an old or new either door or window. So going
6 through these, there should be a total.

7 Q I want to mark that as an exhibit. Is
8 that something I can give to Janice and have her
9 reproduce and then mail back to you, or can you-all
10 make color copies?

11 A We can make copies right now.

12 Q Can you make color copies?

13 A Yeah.

14 Q If we can have a color copy made.

15 (Recess taken.)

16 A I should clarify. These are
17 approximations taken some from the balcony but some
18 notes from the ground. So there may be a small
19 margin of error in these.

20 (Exhibit No. 57 marked for
21 identification.)

22 BY MR. COBB:

23 Q If we do the math -- What we've marked as
24 Exhibit 57 also includes the sliding glass doors as
25 well?

1 Q Are there any other windows on the
2 breezeway street side other than old windows?

3 A There is not.

4 Q Are there any of the windows on the end
5 walls other than the U-shaped windows and then these
6 new windows that you just described?

7 A No. I think there are six of those other
8 windows per end wall. That's not shown on these
9 sheets.

10 Q So the end walls, there are a total of
11 six non-U-shaped windows?

12 A Yes.

13 Q And then there's three U-shaped windows
14 per side. Correct?

15 A Yes.

16 Q With regards to the total, on the ocean
17 side of the four buildings there's, by your
18 calculation, 111 new sliding glass doors that are
19 being replaced?

20 A Correct.

21 Q 72 fixed windows being replaced?

22 A Correct.

23 Q 97 old sliding glass doors being
24 replaced?

25 A Correct.

- 1 Q And 72 old fixed windows being replaced?
 2 A Correct. Again, these were field notes
 3 taken from the ground level. So they may not be
 4 perfect, but they are the best I could decipher from
 5 the ground.
 6 Q Of the fixed windows that are new and
 7 old, how many of those are the 8 x 3s versus the
 8 4 x 4s?
 9 A All fixed windows are 8 x 3s.
 10 Q On the ocean side?
 11 A Yes.
 12 Q So when you gave me earlier a total of
 13 144 fixed windows 8 x 3, 72 of them are old and 72
 14 are new. So the math works out as 50 percent?
 15 A Yes.
 16 Q The 144 4 x 4 sliding windows that are
 17 being replaced with single-hung, where are they
 18 located?
 19 A That includes all the breezeways and two
 20 windows on each end wall.
 21 Q If there are two on each end wall, that's
 22 four per building. So that's 16?
 23 A Yes.
 24 Q So of the 144 4 x 4 sliding windows being
 25 replaced with single hung, only 16 of those are new

- 1 some point during some repair?
 2 A Right. New referring to something that
 3 appears to have been replaced in the last maybe ten
 4 years or so, and then old being -- appearing to be
 5 quite older than ten years.
 6 Q How many of these windows did you water
 7 test?
 8 A I'd have to look in our report here.
 9 Looking at this sheet in our 2012 report, the final
 10 in April, the site plan, it looks like five of our
 11 15 -- I'm sorry, five of our 14 test areas included
 12 windows.
 13 Q Which windows?
 14 A Test area three includes small windows on
 15 building C, south elevation. And those are the
 16 small two foot windows.
 17 Q South elevation is one of the sides?
 18 A Yes. Building B, test area 11, ocean
 19 elevation, unit 108 is a tall eight foot fixed
 20 window.
 21 Q And looking at the chart, is that an old
 22 window or a new window?
 23 A It looks like a new window.
 24 Q What's the third one?
 25 A Test area two is on building B, south

- 1 windows and the remaining 128 are old windows?
 2 A Yes.
 3 Q The 32 2 x 3 and a half foot windows
 4 being replaced with single-hung windows, where are
 5 they located?
 6 A On the first, second and third floor of
 7 the end walls. I'd have to look at a photograph. I
 8 think there's also one on the fifth floor that's not
 9 shown on these marked-up drawings that we're looking
 10 at.
 11 Q Are those original windows or new
 12 windows?
 13 A Those are new.
 14 Q And then the 24 U-shaped bay windows are
 15 on the sides of the building?
 16 A Yes.
 17 Q And there are six per building?
 18 A Yes.
 19 Q Are those old or new?
 20 A Earlier I estimated about half and half.
 21 Let's see. 12. So it looks like it is half are old
 22 and half are new based on these notes.
 23 Q And then for purposes of our discussions
 24 years from now, old is -- you equate old to be
 25 original, new being something that was replaced at

- 1 elevation, unit 416, and that's a fifth floor
 2 window.
 3 Q Is that an old or a new window?
 4 A It should be a new window. Yes, that
 5 looks like a new window.
 6 Q No. 4?
 7 A Test area one, bay windows at building B,
 8 as in boy, south elevation. In that location our
 9 water was sprayed above the third floor window and
 10 cascaded down all three. The top two, second floor
 11 and third floor are old. The first floor is new.
 12 Q Did any of those windows leak?
 13 A They did. The second floor window.
 14 Q Did the first floor window leak?
 15 And I guess just to be precise, did the
 16 first floor window fail your water testing?
 17 A We had water intrusion on level two and
 18 three. We did not observe water intrusion on level
 19 one.
 20 Q If there is no observable water intrusion
 21 on the new window which is at the first level, why
 22 is that window being replaced?
 23 A Similar to what we've discussed
 24 yesterday, in tying the surrounding wall cladding
 25 elements into that opening is preferred to trying to

1 leave a unit in place and tie into an existing
2 window or door, either pulling it out and putting it
3 back in or tying into the in-place unit.

4 Q Is there a construction deficiency that
5 justifies the removal and replacement of that
6 window?

7 A Of that window on -- that specific
8 window? I would have to look into that to see if
9 that falls into our impact-rated concerns. I'm not
10 sure.

11 Q Other than there being some issue about
12 the window possibly not being impact rated, is there
13 any other construction deficiency that would justify
14 the removal of that window?

15 A The tying in of the components and
16 cladding adjacent to it.

17 Q What's wrong with the cladding adjacent
18 to that window?

19 A Based on our test cuts, the waterproofing
20 is not tied into the windows in those areas.

21 Q But you just water tested it and it
22 didn't leak. Correct?

23 A Yes, sir.

24 Q That would indicate, wouldn't it, that
25 the waterproofing was adequate for the volume of

1 window.

2 A No water intrusion was observed in that
3 area.

4 Q What's the basis of removing and
5 replacing that window if it passed your spray test?

6 A The same concerns as the others in the
7 tying in of the cladding to that window.

8 Q How much water did you subject that
9 window to?

10 A We did a two hour cascading water test
11 with no pressure.

12 Q Are you aware of that window being
13 exposed or subjected to that volume of water in the
14 historical use of that window?

15 A I have not looked into that.

16 Q Do you know whether your spray test
17 subjected the window to more water than it has ever
18 been subjected to during its existence at that
19 project?

20 A I do not know that.

21 Q Isn't that one of the requirements of the
22 AAMA testing?

23 A AAMA in forensic testing allows for some
24 judgment to be used in using procedures from other
25 AAMA tests, and we have seen in previous cases of

1 water that you subjected that window to?

2 A In that particular case, yes. But if
3 those are representative installations of the rest
4 of the building, then we are concerned with those
5 installations.

6 Q You have concerns, but you tested your
7 concern at least as to that window, and that window
8 did not exhibit any signs of leaking. Correct?

9 A That specific window did not.

10 Q So you would agree with me that there is
11 no known construction deficiency that justifies the
12 removal of that window?

13 MR. FLYNN: Object to the form.

14 A Within the manufactured unit of the
15 window, that would get into our impact rating
16 discussion. But besides that, within the
17 manufactured unit, I'm not aware of whether there
18 are issues there.

19 BY MR. COBB:

20 Q Let's jump back. The first three windows
21 where you spray tested, did those three leak?

22 A Which one do you want to look at first?

23 Q No. 3.

24 A Test area three?

25 Q Small window, C elevation, small two foot

1 water testing where, you know, water saturates
2 through the components and can be an issue, and that
3 is what we addressed there.

4 Q I'm going to be fair to you. I represent
5 some window manufacturers. Where in AAMA 511 does
6 it say what you just said?

7 A Do you have --

8 Q I do not have a copy with me.

9 A I believe it discusses cascading water
10 tests.

11 Q Didn't AAMA 511 also require there to be
12 some historical investigation into the amount of
13 water or the problems?

14 A It might.

15 Q Do you know that?

16 A It probably does.

17 Q And you didn't do that, did you?

18 A I did not do that.

19 Q Does AAMA 511 specifically say that you
20 can use other methodologies and comply with AAMA
21 511, or does it say that AAMA 511 is the sole test
22 to be done on a forensic examination of a window
23 that's been installed for greater than six months?

24 A AAMA 511 references -- I believe it's
25 AAMA 502 and 503.

Page 267 1 Q And 502 refers to newly manufactured 2 windows. Correct? 3 A I would have to pull them up. 4 Q If 502 refers to newly installed or newly 5 manufactured windows, that would not apply to what 6 was done at Shipwatch. Correct? Or likewise -- 7 A Again, if we can pull that up, we can 8 look at it and I'll confirm that. 9 Q Likewise, if 511 says that it's the sole 10 test for windows that have been installed in the 11 field for greater than six months, that would be the 12 test that AAMA would recognize as appropriate for 13 Shipwatch. Correct? 14 A Yeah, we'd have to look at that. 15 Q Spray test No. 2 was test No. 11D, ocean 16 side, unit 108. Did that window fail your spray 17 test? 18 A In that location we tested the 19 surrounding components and cladding only and water 20 intrusion was observed within the metal stud 21 framing. 22 Q How much water did you subject that 23 window to? 24 A We did a 30 minute cascading water test. 25 Q How much pressure?	Page 269 1 building A. Water spray testing was not performed. 2 We did a sill dam test. And this test area includes 3 two different windows on level five of unit 408. 4 Q What AAMA test authorizes a sill dam 5 test? 6 A I can't recall. 7 Q Are you aware whether any AAMA testing 8 protocol authorizes a sill dam test? 9 A I am not. 10 Q Did either of these windows fail your 11 sill dam test? 12 A They did not. 13 Q And were those new windows or old 14 windows? 15 A Those were new windows. 16 Q What size windows? 17 A One of them was approximately 4 x 4, and 18 the other was one of the two foot windows. 19 Q So what's the justification for replacing 20 either of those windows? 21 A That would get into the impact-rated 22 concerns and the tying in of the surrounding 23 components and cladding to those windows. 24 Q And you would agree with me that the 25 volume pressure on your sill dam test was probably
Page 268 1 A Zero pressure. 2 Q How far away was the nozzle? 3 A 12 inches. 4 Q In your opinion does that accurately 5 replicate wind-driven rain? 6 A Because we didn't have air pressure 7 pulled on it, I guess not wind-driven rain. 8 Q The third spray test is at test No. 2, B 9 building south, unit 416. Did that window fail your 10 spray test? 11 A You said test area two. Correct? 12 Q You told me that it was No. 2, B south, 13 unit 416, fifth floor. 14 A Yes. 15 Q How much water did you subject that 16 window to? 17 A We ran the test for 75 minutes. We 18 observed water 30 minutes into the test. 19 Q How much pressure? 20 A No pressure. 21 Q And how far away was the nozzle? 22 A 12 inches. 23 Q Let's go to the fifth spray test. We 24 haven't talked about that one yet. 25 A Test area 13 is on the south side of	Page 270 1 greater than either of those windows would be 2 subjected to during a normal rain event. Correct? 3 A During an average rain event, yes, it 4 would be more than average. 5 Q Let's talk about the sliding glass door 6 count. According to the fourth page of Exhibit 57, 7 there are 208 sliding glass doors on the property? 8 A That only counts the ocean elevation. 9 Q So 208 sliding glass doors on the ocean 10 elevation? 11 A Correct. 12 Q And you've got that of the 208, 111 are 13 considered new and 97 are considered old or 14 original. Correct? 15 A Yes, sir. 16 Q And the repairs include removing and 17 replacing all 208 of those sliding glass doors on 18 the ocean side. Correct? 19 A Yes. 20 Q How many sliding glass doors are there 21 elsewhere on the property? 22 A The fifth floor street or west elevations 23 have eight total sliding glass doors per building. 24 Q So 32 total. 25 A And then --

6 (Pages 267 to 270)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

- 1 Q How many of those 32 are old and new?
- 2 A That's probably in another set of notes
- 3 that I can look for if you'd like me to.
- 4 Q Sure. While you're doing that, there
- 5 aren't any other sliding glass doors, are there?
- 6 A There are some right here (indicating).
- 7 We've been calling those corner balconies. It's
- 8 facing the street, but it's on the end wall.
- 9 There's one on each floor, floors one, two and
- 10 three.
- 11 Q So end wall corners have one sliding
- 12 glass door per side?
- 13 A Per balcony, yeah, per floor. So six per
- 14 building, three per side.
- 15 Q So six per building?
- 16 A 24 on the total property.
- 17 Q For a grand total of 264 sliding glass
- 18 doors.
- 19 A I've got notes on three buildings. I
- 20 would have to dig through photographs to find that
- 21 information on building D. Is that something you'd
- 22 like me to do?
- 23 Q No. Let's see if we can plug along. So
- 24 the fifth floor street side, 32 sliding glass doors,
- 25 you've got three of the four buildings?

- 1 A Yes. I have field notes for three of the
- 2 four buildings on whether or not they are old or
- 3 new.
- 4 Q So just give me the building and old or
- 5 new.
- 6 A Building A, the notes are showing seven
- 7 of the eight.
- 8 Q Are?
- 9 A Are new.
- 10 Q Building B?
- 11 A Building B, the notes are showing three
- 12 of the sliding doors are new. These notes are by
- 13 Ryan Weyant, W-e-y-a-n-t.
- 14 Building C, notes show three of the eight
- 15 sliding doors are new on the fifth floor street
- 16 side.
- 17 Q Did any of the water spray testing that
- 18 you performed involve any of the fifth floor street
- 19 side sliding glass doors?
- 20 A I believe so. Test area 12.
- 21 Q Where was that?
- 22 A That is the fifth floor street side of
- 23 building D, unit No. 427.
- 24 Q Did that sliding glass door fail your
- 25 spray test?

- 1 A We observed water intrusion in the
- 2 adjacent wall components.
- 3 Q Is that an old or a new sliding glass
- 4 door?
- 5 A That is new.
- 6 Q And how long did it take for the water to
- 7 appear?
- 8 A That is not in this report. That may be
- 9 in notes that are on the digital files; or it could
- 10 be that we ran the water, and that when we stopped
- 11 and cut open, we saw water. I'm not sure based on
- 12 what we're showing here exactly when that water
- 13 began.
- 14 Q What was the construction deficiency that
- 15 led to the water intrusion?
- 16 A Improper terminations of the facade
- 17 components adjacent to the door.
- 18 Q What does that mean?
- 19 A Waterproofing wasn't tied in in the wall.
- 20 Q Did you spray test any other fifth floor
- 21 street side sliding glass door?
- 22 A We did not.
- 23 Q The sliding glass doors that are at the
- 24 end wall corners, which are six per building, are
- 25 those old or new?

- 1 A I'm not sure. That, I would have to look
- 2 at photographs. I'm not sure we have field notes on
- 3 that.
- 4 Q Did you spray test any of those?
- 5 A We did not.
- 6 Q Do you have photographs that you can look
- 7 at to tell me whether or not they are old or new?
- 8 A Yeah.
- 9 Q Can you do that real quick?
- 10 A I can do it. I'm not sure how long that
- 11 will take, but I can try to.
- 12 Q When we go out there and look at this
- 13 area that you described as the end wall corners,
- 14 what would we be looking for to decide whether it is
- 15 an old sliding glass door or a new sliding glass
- 16 door?
- 17 A The old versus the new are visibly
- 18 different in terms of color and size of the aluminum
- 19 frame.
- 20 Q What's the difference in color?
- 21 A The older ones are a lighter brown, where
- 22 the newer ones are a darker bronze.
- 23 Q Thanks for looking. Let's see if we can
- 24 move on a bit.
- 25 Going back to Exhibit 57, I want to

Page 275 1 confirm a couple of things. With regards to the 2 windows, the totals, you told me that there were 72 3 old eight foot by three foot windows. Correct? On 4 the ocean side. Correct? 5 A Yes. 6 Q And the 72 old eight foot by three foot 7 windows are all located on the ocean side of 8 building C and D. Correct? 9 A That's correct. 10 Q There are no new eight foot by three foot 11 windows currently installed on the ocean side of 12 buildings C and D. Correct? 13 A Right, prior to our work. 14 Q So the repair work that's being done is 15 the removal of the 72 old eight foot by three foot 16 windows on the ocean side of buildings C and D. 17 Correct? 18 A Yes. 19 Q With regards to the sliding glass doors, 20 there are 52 sliding glass doors on the ocean side 21 of each building. Correct? 22 A That sounds correct. 23 Q One sliding glass door per unit. 24 Correct? 25 A Yes. The fourth floor -- fourth and	Page 277 1 ocean side of C and D. The exact locations, I'm not 2 a hundred percent sure where it stops and starts. 3 I'm not sure that I know of a pattern of it. 4 Q Where is the DEFS installed on the ocean 5 side of buildings C and D? 6 A I'm not sure. There is some EIFS and 7 some DEFS. I would say most of it is DEFS, but I 8 couldn't quantify that, or I have not quantified 9 that. 10 Q Is there DEFS on the first floor of the 11 ocean side of building C and D? 12 A I believe there was, yes. 13 Q Can you tell me where? 14 A Again, I specifically don't know. You 15 know, during our demo of the current work, there was 16 EIFS and DEFS. Most of it DEFS. Some of it EIFS. 17 I can't recall where one portion specifically 18 stopped and the other began. During their demo can 19 be -- they don't want necessarily want engineers 20 standing right behind them. 21 Q Let's move along. Page 7 of your January 22 11, 2012 report, item 2, little e, "Some doors have 23 storm shutters installed on the outside face of the 24 surrounding facade and top of the balcony deck. The 25 shutters have been moved in many locations leaving
Page 276 1 fifth floor is one unit. So they will have a slider 2 on the fourth floor -- one slider on the fourth and 3 one on the fifth. That is a two-story unit. 4 Q And exactly half of the sliding glass 5 doors being removed and replaced on buildings C and 6 D are old. Correct? 7 A Half of sliders, C and D? 8 Q 52 out of 104. 26 per building. 9 A That sounds correct. Would you repeat 10 that again? Half of the old sliders on -- Yes. 11 Yes, that's correct. 12 Q And you would agree with me that none of 13 the folks involved in subsequent repairs after 14 original construction are responsible for the 15 problems associated with the old sliding glass doors 16 or the old windows. Correct? 17 MR. FLYNN: Object to the form. 18 A We're getting into, again, the tying in 19 of components to an opening and evaluating 20 responsibility for that, and I have not done that. 21 BY MR. COBB: 22 Q On the ocean side of these buildings C 23 and D, are the old windows installed in anything 24 other than EIFS? 25 A On C and D? There is some DEFS on the	Page 278 1 unsealed fastener holes through the deck coating and 2 wall cladding." 3 Did you do anything to spray test those 4 areas to find out how much water intrusion had 5 occurred as a result of the removed storm shutters 6 and lack of sealant on those holes? 7 A Can you repeat the page that you're on? 8 Q Page 7. 9 A Of the April 2012? 10 Q Of the January 11, 2012 report. 11 A Could you please repeat the question? 12 Q That paragraph (indicating). 13 A Right. I was flipping to that. 14 Q Did you do any water testing to determine 15 if there's water intrusion where folks did not seal 16 the fastener holes? 17 A I did not do water testing in that 18 location. 19 Q Any idea of when you say "some doors have 20 storm shutters that have been removed" what the 21 count is? 22 A Actually, I don't. It was hit or miss 23 where those storm shutters were. 24 Q Let's talk about the deck coating, which 25 is item No. 3 on page 7 of the January 11, 2012

8 (Pages 275 to 278)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 Carolina Concrete and its subs during the work with
 2 regards to when they discovered a corroded stud what
 3 to do?
 4 A I'm not aware of that.
 5 Q So you're not aware of the instructions
 6 that the Shipwatch folks gave to Carolina Concrete
 7 about that?
 8 A No, I'm not.
 9 Q With regards to the chimney framing
 10 issue, what is the problem with the chimneys that
 11 necessitated a complete rebuild?
 12 A Our structural engineer, Tim Cook,
 13 determined that they would not adequately meet the
 14 wind load requirements.
 15 Q And why not?
 16 A Just the framing components and
 17 connections were inadequate.
 18 Q Did you-all test the original
 19 construction of the chimneys, or are these
 20 remediated chimneys?
 21 A These are the chimneys as we found them
 22 in this phase of work.
 23 Q Do you know whether they were original to
 24 the building or whether or not they were at some
 25 point added later?

1 A I do not.
 2 Q Did it appear that they were added later?
 3 A It's hard to tell. I don't know.
 4 Q Did anybody do any type of investigation
 5 about the chimney caps, whether or not they were
 6 leaking or whether or not they needed to be replaced
 7 as well?
 8 A Chimney caps?
 9 Q Or the spark arrestor or whatever the
 10 apparatus is.
 11 A Oh, those are being replaced. They were
 12 corroded and had broken components -- broken metal
 13 pieces on them. The caps themselves, I'm not sure
 14 if we did water testing on those.
 15 Q Are you aware of any warnings given by
 16 Bob Wiggins to Shipwatch about the chimneys, the cap
 17 and the spark arrestors during the history of
 18 Carolina Concrete's work at the project?
 19 A It's my understanding that Linda Jernigan
 20 prior to our work, our design work beginning, was
 21 aware of the problems associated with the spark
 22 arrestor pieces.
 23 Q And what was she aware of?
 24 A That they needed to be replaced.
 25 Q And who told her about that?

1 A I do not know.
 2 Q It would be safe to assume that she
 3 didn't climb up and inspect that area. Correct?
 4 A That's a reasonable assumption.
 5 MR. COBB: Since we finally agree on
 6 something, I'll quit asking you questions. Thank
 7 you for your time.
 8 (Recess taken.)
 9 EXAMINATION
 10 BY MR. KELLY:
 11 Q Mr. Isaacs, my name is Britt Kelly. I'm
 12 down in Charleston. I'm sorry I couldn't be there
 13 with you today, but I'll try to do my best over the
 14 phone.
 15 If you would, please allow me to finish
 16 my question before you begin to respond and
 17 hopefully we'll be okay.
 18 A Okay.
 19 Q My first question for you, have you ever
 20 worked for a window manufacturer or distributor?
 21 A I have not.
 22 Q Have you ever worked for any product
 23 supplier?
 24 A I have not.
 25 Q Do you believe you're an expert

1 concerning the duties and responsibilities of a
 2 product manufacturer or a distributor?
 3 A I am not.
 4 Q At various points during your examination
 5 by Mr. Cobb you referenced -- I think your term was
 6 "impact-glass concerns." Do you remember that?
 7 A Yes, sir.
 8 Q Can you describe that for me, please?
 9 What exactly are you talking about there?
 10 A When we were looking into information on
 11 the sliding doors and windows, our research led us
 12 to believe that the sliders are not impact rated. I
 13 don't have the notes in front of me, but I think
 14 that came from discussions with EFCO technical
 15 services and finding out what actual units were on
 16 the building.
 17 Q Did you have those discussions with the
 18 EFCO technical services people?
 19 A I can't recall. That sounds correct. We
 20 could look -- I'm not sure if we have notes on that.
 21 Q Do you typically take notes like that?
 22 A Yeah, we should have something related to
 23 that.
 24 Q Do you have your entire file in front of
 25 you?

Page 303

1 A We do.

2 Q Not right now, but maybe at some point we

3 can pull those out. But my question, I guess, what

4 I'm trying to get at is, do you know if the phone

5 call was with the EFCO people at one of their

6 locations or W.C. Johnston folks?

7 A I can't recall specifically.

8 Q How long do you think it would take you

9 to put your hands on that note?

10 A We've got a big pile here. I'm just not

11 sure. I could take some time and start digging.

12 Q Why don't we table that for a second and

13 we'll come back to that before we wrap up.

14 Was there any other research that you did

15 to determine whether or not any of the EFCO products

16 was impact rated?

17 A We did not. I don't think so.

18 Q Your concern about the impact rated or

19 impact ratings of the glass of the EFCO product, is

20 that limited just to the sliding glass doors, or

21 does it relate to other products?

22 A I believe it relates to the other

23 products.

24 Q What other products at Shipwatch do you

25 believe EFCO manufactured and distributed?

Page 304

1 A I'm not sure. Off the top of my head,

2 I'm not sure. I guess I was under the assumption

3 that most of the new materials that we discussed in

4 the previous questioning were generally EFCO

5 products -- sliding windows and fixed windows and

6 bay windows. It's my understanding that those were

7 also EFCO. But I don't have notes on that in front

8 of me.

9 Q How did you gain the understanding that

10 the bay windows were EFCO products?

11 A Again, I'm not sure. I would have to

12 look in my notes to see if they are or not.

13 Q What type of notes did you make to show

14 the manufacturer of a product?

15 A I know on several of the products there

16 are some notes from the manufacturers, either

17 stamped on the aluminum frame or perhaps on the

18 glass.

19 We've also had some -- I guess some

20 verbal communication with the owner indicating that

21 in general most of the products were EFCO products.

22 Q Who is the owner you're referring to?

23 A Linda Jernigan.

24 Q Mr. Cobb referenced a number of original

25 door and window units on the project. I'm trying to

Page 305

1 use his language as best I can. You know when

2 you're out there -- I guess buildings C and D are

3 undergoing the repairs now. But before they did, if

4 you were in one of the units in the living room,

5 there's a sliding glass door and then some fixed

6 windows next to that sliding glass door. Does that

7 sound familiar?

8 A Yes.

9 Q The majority of those units, at least you

10 believe that the sliding glass doors and the fixed

11 windows that were installed prior to this latest

12 round of construction work were original to the

13 building?

14 A I'll pull up that sheet that I just had.

15 It looks like based on these notes -- I forget what

16 exhibit that was, but these elevation drawings of

17 making notes of old versus new, it appears that in

18 the family room most of those sliding doors are old.

19 Q What about the fixed windows that are

20 next to those sliders on floors one through three of

21 buildings C and D?

22 A Buildings C and D, those fixed windows

23 are all old according to these notes.

24 Q Did you gain an appreciation for how old

25 those fixed windows and sliding glass doors in the

Page 306

1 living rooms of floors one through three of

2 buildings C and D were?

3 A Again, what we're calling new was

4 probably within the last eight to ten years

5 approximately. And then what we're calling old,

6 based on the color and things we discussed

7 previously, definitely more than that. 20 plus

8 years would be a reasonable approximation.

9 Q Remind me how you described the

10 differences between the new product and the old

11 product.

12 A For these notes, you know, taken from the

13 ground and looking up at the building, and in

14 general when we did go to actual units on balconies

15 and end units, the new windows had a much darker

16 bronze frame with much wider aluminum frame

17 components, and the older units had a noticeably

18 faded color to a lighter brown and more narrow

19 aluminum components.

20 Q How would you describe the difference, if

21 any, in the glass between the new and the old

22 product?

23 A I'm not sure I looked too closely at the

24 glass itself. There is a slightly different color

25 in terms of thickness. I'd have to refer back to

15 (Pages 303 to 306)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 photographs.

2 Q Based on your experience and your
3 observations in the field at Shipwatch on buildings
4 C and D on floors one through three, you believe
5 that the old doors and fixed units have impact glass
6 within them?

7 A I do not believe that they had that.

8 Q When was the decision made to replace all
9 the windows and doors at Shipwatch with impact-rated
10 glass product?

11 A I guess that would be after our
12 investigative reports. So our last one was April
13 12th. And after that April 12th report, we met with
14 the Shipwatch HOA and discussed remediation.
15 Specifically a date, I'm not sure of a specific
16 date.

17 Q Who was at that meeting?

18 A These were telephone calls and site
19 meetings between Jeff Miller and Shipwatch.

20 Q Were you part of those?

21 A I was not an integral part. I may have
22 listened into some phone calls or attended one or
23 two meetings that I don't remember specifically.
24 But Jeff was in charge of leading those discussions.

25 Q What do you remember about the first

1 meeting or phone call you had where an issue was
2 brought up about removing and replacing the windows
3 and doors at Shipwatch because of impact glazing?

4 A What's the question about the impact
5 glazing?

6 Q What do you recall about the first
7 meeting or phone call that you participated in where
8 an issue was brought up about replacing the windows
9 and doors because of impact-rating concerns?

10 A I don't recall specifically. I'm sure
11 after we discovered they were not impact rated, we
12 mentioned that to them. I don't specifically
13 remember doing that or when it happened.

14 Q In 2009, you authored a report with
15 Mr. Parker about the conditions of the building.
16 Correct?

17 A That's correct.

18 Q And those same old windows and doors were
19 installed in the building at that time. Right?

20 A That's correct.

21 Q And an observation could have been made
22 to determine that those windows and doors did not
23 have impact glazing. Correct?

24 A Yeah. We were under the impression that
25 the owner had a schedule in place to replace those.

1 Q How were you under that impression?

2 A We were told by Shipwatch.

3 Q Do you recall if the suggestion to
4 replace all the windows and doors was raised by
5 someone at Sutton-Kennerly or raised by the owners?

6 A That was likely an SKA decision. I think
7 we considered the idea. I think we tried to find
8 out if we could improve the existing newer products,
9 and I think the conclusion was that that was not a
10 preferred method of repairs in terms of, I guess,
11 cost and time. I can't remember if it could or
12 could not have been done at all.

13 Q It sounds like to me someone reached a
14 conclusion that windows and doors that may not be
15 impact rated could not remain in the buildings at
16 Shipwatch. Is that accurate?

17 A That's correct.

18 Q Who made that determination?

19 A Sutton-Kennerly.

20 Q Did you participate in that analysis?

21 A I assisted Jeff Miller in that analysis.

22 Q How was that determination made that
23 non-impact rated product could not remain in the
24 buildings at Shipwatch?

25 A Because they are in a wind region that

1 requires impact-rated components.

2 Q For new product?

3 A Yes. That's my understanding.

4 Q And what standard or authority are you
5 relying upon for that proposition?

6 A I believe that's in the IBC,
7 International Building Code.

8 Q What version of the IBC?

9 A I don't have those in front of me. Like
10 we mentioned earlier, several phases of work were
11 done at different times. So there may be different
12 codes applicable at different times of work being
13 performed.

14 Q What I'm talking about is what standard
15 you believe governs the decision Sutton-Kennerly
16 made to remove and replace all the product with an
17 impact-rated product?

18 A I believe that was the building code. We
19 have a structural engineer. I do not personally do
20 structural engineering. And he is more familiar
21 with the building code, and he also assisted Jeff
22 Miller in reaching that conclusion. And he is more
23 familiar with the building code and how it applies
24 to wind-related items than myself.

25 Q What is his name?

Page 311 1 A Tim Cook, C-o-o-k. 2 Q It seems that over 50 percent of the 3 building had what was known to everyone as 4 non-impact glazing product within it for a number of 5 years and no recommendation was made to replace all 6 of that product with impact-rated glazing. So how 7 did it come about in 2012 that a decision was made, 8 okay, now we need to replace everything with 9 impact-glazed product? 10 A Again, we were under the impression in 11 2009 that a plan was in place already to update 12 those products. 13 Q So is it acceptable for non-impact rated 14 product to be in the building between 2000 and 15 2009? 16 A For it to be in the building at all? 17 Again, I'm not as familiar with the wind 18 requirements in the building code. I believe it 19 applies to the time of installation and repairs. 20 I'm just not sure. 21 Q What jurisdiction had authority over the 22 replacement work that was performed at Shipwatch in 23 the 2000s? 24 A Can you repeat that, please? 25 Q What jurisdiction relative to the	Page 313 1 Q Have you reviewed any of the project 2 documents produced by Carolina Concrete? 3 A I have not. 4 Q Same question for Charleston Glass. Have 5 you reviewed any of their project documents? 6 A I have not. 7 Q What about EFCO or W.C. Johnston 8 Architectural Sales? 9 A I have not. 10 Q Did the 1997 Standard Building Code 11 require impact glazing in window and door products? 12 A I do not know for sure. I do not believe 13 that it did. 14 Q I've reviewed your reports and it looks 15 to me like Sutton-Kennerly & Associates water tested 16 several EFCO products, some windows and doors. Do 17 you believe that to be the case? 18 A Yes. 19 Q Did any of the water testing performed by 20 Sutton-Kennerly & Associates reveal failures with 21 the EFCO products? 22 A No. We had some -- a small amount of 23 water come in on one sliding door while applying 24 pressure, but that water did not drip over the edge 25 in order to constitute a leak. So, no, there was
Page 312 1 building department had authority over the 2 replacement work at Shipwatch that occurred in the 3 2000s? 4 A Well, they would have used South 5 Carolina -- State of South Carolina adopts the 6 International Building Code, and whatever building 7 code they had adopted at that time would be their 8 governing code. And then the Isle of Palms -- the 9 City of Isle of Palms also has a building department 10 for construction work. 11 Q Do you know what the Isle of Palms' code 12 adoption history is? 13 A I do not. 14 Q Do you know if the Isle of Palms building 15 department had authority to permit work at Shipwatch 16 during the 2000s? 17 A I do not know that for sure, but that 18 seems reasonable. 19 Q The building official has the ability to 20 permit work under a certain version of the code? 21 A Yes. I would say, yes, that sounds 22 correct. 23 Q What building code was the Shipwatch 24 window and door replacement work permitted under? 25 A I'm not aware.	Page 314 1 not a failure. 2 Q Is that the one you referred to in the 3 report as spitting in the glass? 4 A That's correct. 5 Q But you deemed that to pass the test? 6 A I believe so. Let me look up that actual 7 area to remember. 8 That's correct. Test area 14, no water 9 intrusion was attributed to the manufactured door 10 unit. 11 Q Are you aware of any failures of the EFCO 12 products that have led to water intrusion into the 13 building or the building cavity? 14 A I'm not aware of that. 15 Q And I should specify or should clarify 16 that. I said building. I'm referring to all four 17 buildings at Shipwatch. Are you aware of any 18 failures of EFCO products that have led to water 19 intrusion into any of the four buildings or the 20 building cavity of the four buildings? 21 A I'm not aware of that. 22 Q Do you hold any opinions that the EFCO 23 products supplied at the project are defective in 24 design or fabrication? 25 A I do not have an opinion on that.

17 (Pages 311 to 314)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 Q Do you know if anyone at SKA has an
2 opinion as it relates to the products supplied to
3 the Shipwatch job as to whether those EFCO products
4 are defectively designed or fabricated?

5 A Jeff Miller, the project manager, would
6 have that.

7 Q What do you believe Mr. Miller's opinion
8 to be?

9 A I can't speak for him. But the water --
10 You know, the manufactured units passed the water
11 testing. So in terms of water testing that I did,
12 they are not defective in shedding water away from
13 the building.

14 Q Has Mr. Miller told you that he holds an
15 opinion that the EFCO products supplied to the
16 Shipwatch buildings are defective in some manner?

17 A He has not told me that.

18 Q But you believe he holds that opinion, or
19 did I misunderstand you?

20 A I don't know.
21 MR. KELLY: If you don't mind, would
22 you take a moment to look for those notes we talked
23 about. If you find them, I would like to get the
24 dates on them. I want to make sure they've been
25 produced to us.

1 A October 24, 1983.

2 Q And how long have you lived in the
3 Charlotte area?

4 A I moved here in June of 2006.

5 Q Tell me about your education.

6 A I have a bachelor's degree in civil
7 engineering from Clemson University.

8 Q When did you receive that?

9 A That was the spring of 2006.

10 Q Any formal education after that?

11 A No.

12 Q All of your registrations, licenses,
13 certifications, could you list those for me?

14 A I am a professional engineer in North
15 Carolina and South Carolina.

16 Q I am looking at Exhibit 58, and this is
17 what you've handed to me in response to my request
18 for a CV or resume. I think you gave it with the
19 caveat that this may need updating.

20 A Yeah, I haven't -- I didn't produce that.
21 That was -- I'm not sure when that was produced.
22 But I asked our administrative assistant for a
23 recent resume, and I haven't had a chance to review
24 it since we sat down.

25 Q Is this something that is incorporated

1 (Lunch recess taken.)

2 (Exhibit Nos. 58 and 59 marked
3 for identification.)

4 EXAMINATION

5 BY MR. ROOT:

6 Q Mr. Isaacs, my name is David Root. I
7 represent BASF, which is a defendant in this lawsuit
8 brought by the Shipwatch folks. I'll be asking you
9 some questions today, as will these other attorneys.

10 Because we're not going to finish your
11 deposition in total today, I'm going to limit my
12 questions to a certain span of time reserving the
13 right to ask you questions at a later date. Because
14 there are a lot of photographs, et cetera, that I
15 want to go over and get in some more detail, but at
16 least I can cover some of the general issues today.

17 As I understood it from some of your
18 earlier testimony, this is the first time you've
19 been deposed?

20 A That's correct.

21 Q Let's do some background stuff, because I
22 don't think we covered much of that. Where were you
23 born?

24 A I was born in New Haven, Connecticut.

25 Q And when were you born?

1 within SKA's advertising, marketing-type materials?

2 A Yes.

3 Q When you speak of seven years of
4 experience with SKA -- and we'll talk about that.
5 We'll talk about it in reverse chronology. Have you
6 had any jobs in the construction industry prior to
7 SKA?

8 A I did summer work at a surveying company.

9 Q When was that?

10 A I would have to look that up. I believe
11 that was the summer after my freshman year in
12 college. So that would be most likely the summer of
13 2003.

14 Q What was the nature of the surveying?

15 A It was a small surveying company that had
16 a contract to define the boundary of the Redstone
17 Arsenal in Huntsville, Alabama, which is a 30-plus
18 mile perimeter of federal property, and they wanted
19 to establish their property lines for security
20 reasons.

21 Q When is the next job you held in the
22 construction industry?

23 A In the construction industry, I did
24 some -- I had some summer work at the University of
25 Alabama Huntsville where I assisted graduate

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.:
-versus-) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,)

-versus-)

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

THE CONTINUATION OF THE DEPOSITION OF GREG
ISAACS was taken as a witness on behalf of the
Defendants, pursuant to South Carolina Rules of
Civil Procedure, at 9:30 a.m. on Thursday, the 28th
day of August 2014, at the offices of
Sutton-Kennerly & Associates, 4651 Charlotte Park
Drive, Charlotte, North Carolina, before Janice O.
Darby, Registered Professional Reporter and Notary
Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MS. D. SUMMERS CLARKE

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. BRITT KELLY (by phone)

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL A. EARHART

KERNODLE ROOT COLEMAN
Attorneys at Law
P.O. Box 13897
Charleston, SC 29422
BY: MR. DAVID A. ROOT

RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MS. SAMIA NETTLES

Reported by:
MS. JANICE O. DARBY
(843) 814-7666
Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES

For the Plaintiff:
ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. PATRICK FLYNN

For the Defendants:
RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MS. SAMIA NETTLES

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MR. JONATHAN J. ANDERSON

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MS. JENNIE SMITH

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. STACEY CANADAY (by phone)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

INDEX

WITNESS	PAGE
ISAACS, GREG	
By Mr. Elliott	442, 444, 548
By Ms. Nettles	592
By Mr. Earhart	599
By Ms. Belton	620
By Mr. Root	533
By Ms. Canaday	644
By Mr. Kelly	541
By Mr. Winton	641
By Ms. Smith	635

EXHIBITS:	MARKED
FOR IDENTIFICATION	
No. 170 Handwritten notes	453
No. 171 Handwritten notes	454
No. 172 Handwritten notes	460
No. 173 1/11/12 SKA Report	630

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 when you did your more full report and then started
2 work, do you know of any work that was done between
3 that era or in that era?

4 A I'm unaware of that.

5 Q Have you reviewed your reports, the
6 primary reports? By that, I mean the January and
7 April reports. What have you-all been referring to
8 today? The April report?

9 A Yes, April 2012.

10 Q Which I think encompasses most of the
11 findings from the January report as well.

12 In any event, Exhibit 59, did you review
13 that report prior to your deposition today, in
14 preparation for the deposition?

15 A I did not.

16 Q You are familiar with the findings in
17 that report. Correct?

18 A Yes.

19 Q Do you now deviate or have an opinion
20 contrary to any of those findings?

21 A I do not.

22 Q Pro-Tec has been about two or so months
23 late, for lack of a better term, in getting the job
24 done. Correct?

25 A Yes.

1 expense allocation?

2 A We've had change orders, and we've had to
3 address all of those.

4 Q As far as what would be responsive to
5 that question, meaning something that was an
6 atypical problem that was not perhaps anticipated
7 when the project began, all of those type issues
8 would be incorporated or encompassed within the
9 change orders. Is that correct?

10 A Yeah, that's fine.

11 Q Is that fair enough?

12 A Okay.

13 Q Well, I'm asking you. Is that fair?

14 A Yes, that's fine.

15 Q You keep saying "that's fine." I'm
16 trying to make the most succinct way to get about
17 this, besides from going through all the change
18 orders. If there's something else outside that
19 realm, I wanted to speak about it. But if the
20 change orders encompass the material changes to the
21 work versus what was anticipated on the front end,
22 then we are good. And you're saying yes?

23 A Yes.

24 Q Have you come to form any opinions that
25 there was anything wrong with the DEFS as a product?

1 Q They were supposed to be done May 31st.
2 Correct?

3 A Correct.

4 Q And it's my understanding that they got
5 to substantial completion, in quotes, around August
6 1st?

7 A Correct.

8 Q Do you know what the cause is for that
9 delay?

10 A Allocating their resources, project
11 management, getting people scheduled to do the right
12 things at the right time. Just planning and
13 scheduling.

14 Q On Pro-Tec's behalf?

15 A Correct.

16 Q Have there been any particular problems
17 that you-all have experienced during the course of
18 the construction or the remediation?

19 A Can you be more specific?

20 Q No, because I'm looking for anything that
21 you've experienced. I don't mean just something
22 that's a one-off or atypical, but something that was
23 just simply not anticipated and has caused a great
24 deal of -- I know there have been change orders, but
25 a great deal of change in either time allocation or

1 Meaning not related to installation, but as to it as
2 a product, in its manufacture or design, anything of
3 that nature?

4 A No. That's more Jeff Miller's realm.

5 Q Same question as to the deck coating. Do
6 you have any opinion that there are any deficiencies
7 or problems in a general sense with the deck coating
8 as a product, as it's designed or manufactured?

9 A In terms of the deck coating material
10 itself?

11 Q Yes, sir.

12 A No.

13 Q Have you done any product literature
14 review since we last spoke?

15 A No. Just I've been working on any new
16 products that we use, but nothing previous.

17 Q Had any discussions with anyone from BASF
18 since we last met?

19 A No.

20 MR. ROOT: Mr. Isaacs, those are all
21 the questions I have for you. I appreciate your
22 time.

23 EXAMINATION

24 BY MR. KELLY:

25 Q Mr. Isaacs, I'm on the phone. I've got

1 my kids in the car. This is probably going to be
2 the worst deposition experience ever, but I'm going
3 to give it a shot. I represent EFCO and W.C.
4 Johnston Architectural Sales.

5 I asked you some questions the last time
6 we had your deposition scheduled. And I heard some
7 things today that made me want to clarify some of
8 the testimony today and testimony previously. That
9 will be the basis for my questioning today, and then
10 we'll see how far we have to go.

11 At some point in coming up with repair
12 plans for buildings C and D at Shipwatch, did
13 Sutton-Kennerly & Associates consider reusing the
14 EFCO products that were installed at those
15 buildings?

16 A We did.

17 Q And if there were performance problems
18 with the EFCO product installed at buildings C and
19 D, would Sutton-Kennerly & Associates have
20 considered reusing those products?

21 A Say that again.

22 Q If there were performance problems with
23 the EFCO products that had been installed at
24 buildings C and D, would Sutton-Kennerly &
25 Associates have considered reusing those products?

1 photographs 6 and 7, but it was a small amount that
2 is contained and, according to the AAMA guidelines,
3 is not considered a leak.

4 Q I think you've referred to that at some
5 point as spitting?

6 A Correct.

7 Q And you ended up passing that particular
8 product that had been tested?

9 A That's correct.

10 Q Did any of the product you tested with
11 water fail at Shipwatch?

12 A Can you repeat that question again as I
13 look through these notes?

14 Q Yes, sir. I want to be very careful and
15 precise with our language. So I want to make sure
16 that I understand and everyone else understands that
17 when you were testing window and door products at
18 Shipwatch whether you were testing the window and
19 door surrounds as far as how the product was
20 installed or whether you were testing the product
21 itself. Do you follow me?

22 A Yeah. We did a variety. Sometimes we
23 would isolate the window or door itself and only
24 test that manufactured product. Other times we
25 would do the reverse and test only the surrounding

1 A No.

2 Q Did you administer the water testing that
3 took place at Shipwatch?

4 A Yes. I participated in it with Eric
5 Couch.

6 Q Did you compile the results, or was that
7 Eric?

8 A It was both of us.

9 Q And it's my understanding from your prior
10 testimony that you tested the EFCO product in
11 isolation from the installation of the EFCO
12 products. Is that correct?

13 A Yes, I believe so.

14 Q In testing the EFCO products in isolation
15 from the installation methods, did you determine
16 whether or not the EFCO product passed or failed the
17 water testing?

18 A The EFCO product passed on -- Let's see.

19 Q Did you observe water penetrating through
20 any of the EFCO product during the water test?

21 A Yes. I'm looking at test area 14. That
22 is where we isolated just a new EFCO sliding door,
23 covered up the surrounding facade. And we did not
24 have a technical failure of the EFCO product.

25 We did have some water shown in

1 cladding. And then other times we would test both
2 at the same time.

3 Q When you're considering testing a
4 product, are you considering the way the product is
5 installed or the way in which it has been
6 manufactured?

7 A We are looking at the manufactured
8 component, yes.

9 Q So when you tested the product to
10 determine whether there were any failures of the
11 manufacturing of the product, did you conclude that
12 any of the tests were failures?

13 A I'm flipping through our report here.
14 No.

15 Q Isn't it in fact only the installation
16 methods that failed when you tested the product?

17 A That's correct.

18 Q So at various times in your deposition
19 today when you have indicated that the window or
20 door itself leaked, what do you mean by that?

21 A Do you have a specific location that we
22 were talking about at the time, or are you just kind
23 of saying in general?

24 Q I don't have anything written down. And
25 I'll tell you my recollection is Mr. Elliott asked

1 you some leading questions that ended with the word
2 "correct," and you agreed with him, and asked
3 whether or not the door or window leaked. So what
4 I'm trying to understand is, what did you mean in
5 agreeing to those questions asked whether or not the
6 door or window itself leaked?

7 MR. ELLIOTT: Object to the form.

8 A Okay. So we had some -- You know, that
9 includes the installation of the surrounding
10 cladding and the installation of the manufactured
11 unit.

12 BY MR. KELLY:

13 Q Did you in any way intend to say that the
14 product itself is permitting water to enter the
15 building?

16 A We had water come through one of those
17 bay windows, but I believe that was at a drilled
18 hole on the inside, if my memory is correct.

19 Q Are those bay windows EFCO products?

20 A I don't know.

21 Q I didn't mean to cut you off. If you
22 aren't finished with your testimony as to that
23 drilling in the bay window, please continue.

24 A Just that the leaks are associated with
25 the installation around the window or door.

1 Q So is it not fair for me to assume that
2 you do not believe that the EFCO products themselves
3 were permitting water to enter the building
4 envelope?

5 A That's correct.

6 MR. KELLY: I believe those are all
7 the questions I have for you. I appreciate your
8 patience with me. Sorry if it's too hectic here.

9 EXAMINATION

10 BY MR. ELLIOTT:

11 Q Mr. Isaacs, the sliding glass doors and
12 the storefront windows, I asked you if -- We talked
13 about your water test and the DEFS, whether or not
14 it leaked. And I asked another question, did the
15 doors leak. And you said yes. New sliding glass
16 doors leak and new storefront windows leaked. And
17 then I asked you further why are the new sliding
18 glass doors and windows being replaced, and you
19 agreed that it was because they leaked and because
20 of the impact rating.

21 Now, the sliding glass doors, and we
22 covered the oceanfront, tell me what is it you were
23 talking about that leaked when you said the doors
24 leaked.

25 A I guess I was using "doors" as too broad

1 Q So if someone were to use your testimony,
2 your deposition transcript at a later date to
3 suggest that the product supplied by EFCO for the
4 Shipwatch buildings are leaking, the products
5 themselves as opposed to installation, would that be
6 an incorrect suggestion?

7 MR. FLYNN: Object to the form.

8 A The EFCO sliding door we tested did not
9 leak. The manufactured unit did not leak in that
10 test area 14.

11 BY MR. KELLY:

12 Q Did any EFCO product that you tested
13 leak?

14 A Again, I'm not aware of -- didn't go back
15 and dig back through manufacturers of who did what.
16 But the newer door did not leak.

17 Q Would it make sense that Sutton-Kennerly
18 was going to reuse EFCO products if it found that
19 the EFCO products themselves leaked?

20 A Right. If we found a unit that was
21 leaking, we would not want to reuse that. Correct.

22 Q But you had envisioned reusing the EFCO
23 product that had been installed in buildings C and D
24 as part of the repairs at Shipwatch. Right?

25 A That's correct.

1 of a term and not precise enough.

2 Q Let me ask you this. You tested doors
3 and you tested the cladding. You separated the two.
4 Right?

5 A Correct.

6 Q And water intrusion occurred when you
7 tested the doors. What part of the door leaked?

8 A The components at the perimeter of the
9 door.

10 Q What components?

11 A For example, test area 14, photograph 4,
12 the water simply went underneath the sliding door
13 unit.

14 Q Let me get to that real quick, because I
15 remember we talked about it. It leaked under the
16 door where the door meets the built-up --

17 A That's correct, curb.

18 Q So something about how the door was
19 installed in a curb allowed the water intrusion to
20 occur?

21 A Correct.

22 Q What about the installation, if you can
23 tell me in that detail, caused the leak?

24 A Photographs 4 and 5, you can see a gap
25 between the door and curb, and it goes through to

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.:

-versus-) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,)

-versus-)

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

THE DEPOSITION OF JEFF MILLER was taken as
a witness on behalf of the Defendants, pursuant to
South Carolina Rules of Civil Procedure, at 9:30
a.m. on Wednesday, the 30th day of April 2014, at
the offices of Sutton-Kennerty & Associates, 4651
Charlotte Park Drive, Charlotte, North Carolina,
before Janice O. Darby, Registered Professional
Reporter and Notary Public in and for the State of
South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MR. MICHAEL BARFIELD

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. TIM MULLER (by phone)

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL A. EARHART

KERNODLE ROOT COLEMAN
Attorneys at Law
P.O. Box 13897
Charleston, SC 29422
BY: MR. DAVID A. ROOT

Reported by:
MS. JANICE O. DARBY
763 Gate Post Drive
Mt. Pleasant, SC 29464
(843) 814-7666

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES

For the Plaintiff:
ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. PATRICK FLYNN

For the Defendants:
RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MS. SAMIA NETTLES

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MS. KATHERINE MIARS

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. DAVID S. COBB
MS. JENNIE SMITH

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. STACEY CANADAY
Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

INDEX

WITNESS	PAGE
MILLER, JEFF	
By Mr. Cobb	5

EXHIBITS:	
FOR IDENTIFICATION	MARKED
No. 60 8/13/13 e-mail from Shipwatch	10
No. 61 Handwritten notes	24
No. 62 Code Adoption History	26
No. 63 9/15/09 SKA Letter Clarification	27
No. 64 1/25/12 SKA Addendum Report	48
No. 65 3/27/12 SKA Draft Report	110
No. 66 Pro-Tec Standard Form of Agreement	188
No. 67 Handwritten notes/elevation	234
No. 68 Handwritten notes/elevation	234
No. 69 Handwritten notes/elevation	234
No. 70 3/13/13 Window & Door Totals	234
No. 71 7/17/09 SKA Proposal	234
No. 72 7/17/09 SKA Revised Proposal	234
No. 73 2/10/12 SKA Proposal	234

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 BY MR. COBB:

2 Q Who is the first person, regardless of
3 where they were, that mentioned to you that the
4 homeowners were going to pursue a lawsuit,
5 litigation, claim?

6 A I don't remember who the initial
7 respondent was. I know that I was asked for names
8 of potential attorneys that could provide assistance
9 to Shipwatch in a litigation case.

10 Q When was that?

11 A I'm just guessing that would have been in
12 the 2012 time frame. I may have some sort of
13 handwritten scribble notes somewhere.

14 Q What time frame in 2012? Exhibit 64,
15 which is your January 25, 2012 report, would have
16 been about that period of time?

17 A Well, it could have been -- it may have
18 been after that. I don't know the time frame,
19 because we did a more in-depth report. This was
20 basically a visual survey and a roof moisture
21 survey. It wasn't until August of 2012 that we
22 really got in and started opening up walls and that
23 we got in and did water testing. So it could have
24 been after the issuance of the second, more alarming
25 report on August 5th that litigation questioning

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 And then the second part of this addendum
2 was to actually issue the infrared roof survey
3 report, which I reviewed from our field guys that
4 actually did that test. So I did co-sign and was in
5 agreement with this report.

6 Q Other than reviewing, did you do any
7 actual hands-on on-site investigation that resulted
8 in anything that's included in either the January
9 25, 2012 report or the January 11, 2012 report, or
10 were you simply just reviewing what other people had
11 done?

12 A No. I was on site and participated
13 firsthand in observing and looking and authoring
14 this report. So I actually participated on site in
15 looking at each of the conditions. I sent down a
16 task of my project engineers to do the testing, and
17 then I witnessed a good portion of that testing, of
18 the results, made my own test cuts, made my own
19 observations, walked the site to see all that had
20 been cut, so that I had full knowledge of what was
21 going on in each and every one of these reports.
22 And I believe that I probably wrote 80 percent of
23 the text in both of those reports.

24 Q Both the January 25, 2012 report and the
25 January 11, 2012 report, or are you referring to the

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.:
-versus-) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,)

-versus-)

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

THE CONTINUATION OF THE DEPOSITION OF JEFF
MILLER was taken as a witness on behalf of the
Defendants, pursuant to South Carolina Rules of
Civil Procedure, at 9:30 a.m. on Thursday, the 1st
day of May 2014, at the offices of Sutton-Kennerly &
Associates, 4651 Charlotte Park Drive, Charlotte,
North Carolina, before Janice O. Darby, Registered
Professional Reporter and Notary Public in and for
the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MR. MICHAEL BARFIELD

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. TIM MULLER (by phone)

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL A. EARTHART

KERNODLE ROOT COLEMAN
Attorneys at Law
P.O. Box 13897
Charleston, SC 29422
BY: MR. DAVID A. ROOT

Reported by:
MS. JANICE O. DARBY
763 Gate Post Drive
Mt. Pleasant, SC 29464
(843) 814-7666

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES

For the Plaintiff:
ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. PATRICK FLYNN

For the Defendants:
RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MS. SAMIA NETTLES

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MS. KATHERINE MIARS

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MR. DAVID S. COBB
MS. JENNIE SMITH

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. STACEY CANADAY
Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

INDEX

WITNESS	PAGE
MILLER, JEFF	
By Mr. Cobb	242
By Ms. Miars	278
By Mr. Earhart	345
By Ms. Belton	354
By Mr. Root	370
By Ms. Canaday	395
By Mr. Barfield	406
By Mr. Winton	418

EXHIBITS:	MARKED
FOR IDENTIFICATION	
No. 74 Shipwatch Change Orders/Summary	242
No. 75 3/19/14 Pending Change Orders	242
No. 76 Applications for Payment	242
No. 77 ESR 2359	380
No. 78 Handwritten notes	394
No. 79 Affidavit	452
No. 80 8/23/08 Sisroy report	452

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 MS. MIARS: That is all I have.

2 Thank you very much for your time.

3 E X A M I N A T I O N

4 BY MR. EARHART:

5 Q My name is Marshall Earhart. I represent
6 Charleston Glass. Are you familiar with Charleston
7 Glass?

8 A Nothing other than they are in Charleston
9 and they did some work on this job.

10 Q I'll represent to you that they installed
11 some of the -- they installed some of the new
12 sliders on the ocean-side balconies as well as some
13 of the fixed windows on the ocean-side balconies and
14 possibly some of the bay windows, U-shaped bay
15 windows. I want to talk about -- I guess we can do
16 this fairly methodically.

17 As it pertains to the sliders on the
18 ocean-side balconies, what in your opinion did the
19 installer do wrong?

20 A Well, that question can't be answered
21 exactly, because that gets back to knowing what each
22 of the individual defendants was responsible in
23 doing. So at this point I can only point out the
24 deficiencies and the defects that resulted in damage
25 and problems that is responsible for one or more

1 mechanically anchored to the structural slab. So we
2 found significant deficiencies in the attachment of
3 the units to the framing structure.

4 Q Could you determine what the resulting
5 damage was specifically from problems with the
6 doors?

7 A Specifically with the door unit. The
8 door units, at least one, maybe more, were isolated
9 and water tested and successfully passed the water
10 test performance that we did.

11 The problem with the doors was not the
12 performance of the door units, but it was the
13 impact, the attachment, and the lack or improper
14 waterproofing around the door openings.

15 Q Right. Can you tell me what the
16 resulting damage was with the attachment and lack of
17 waterproofing of the door opening? Can you tell
18 me --

19 A Well, the lack of proper waterproofing
20 around the door openings resulted in staining and
21 corrosion of stud framing and staining/deterioration
22 of sheathing and finish components.

23 Q But there's also problems with the DEFS.
24 Can you break out the damages, or can you
25 determine -- Can you say this resulting damage is

STATE OF SOUTH CAROLINA
THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

SHIPWATCH CONDOMINIUM)
ASSOCIATION,)

Plaintiff,)

) Case No.:
-versus-) 2012-CP-10-3858

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

OSCAR MENDIONDO, Individually)
and as representative of a)
class of similarly situated)
owners of condominium units in)
the horizontal property regime)
known as SHIPWATCH CONDOMINIUMS,)

Plaintiffs,)

-versus-)

CAROLINA CONCRETE SYSTEMS,)
INC., et al.,)

Defendants.)

THE CONTINUATION OF THE DEPOSITION OF JEFF
MILLER was taken as a witness on behalf of the
Defendants, pursuant to South Carolina Rules of
Civil Procedure, at 9:30 a.m. on Wednesday, the 27th
day of August 2014, at the offices of
Sutton-Kennerly & Associates, 4651 Charlotte Park
Drive, Charlotte, North Carolina, before Janice O.
Darby, Registered Professional Reporter and Notary
Public in and for the State of South Carolina.

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES (cont.)

WOMBLE CARLYLE
Attorneys at Law
Five Exchange Street
Charleston, SC 29401
BY: MS. ADRIANE BELTON

BARNWELL WHALEY
Attorneys at Law
P.O. Drawer H
Charleston, SC 29402
BY: MS. D. SUMMERS CLARKE

ROSEN ROSEN & HAGOOD
Attorneys at Law
151 Meeting Street, Suite 400
Charleston, SC 29401
BY: MR. BRITT KELLY (by phone)

MAYBANK LAW FIRM
Attorneys at Law
P.O. Box 12579
Charleston, SC 29422
BY: MR. MARSHALL A. EARHART

KERNODLE ROOT COLEMAN
Attorneys at Law
P.O. Box 13897
Charleston, SC 29422
BY: MR. DAVID A. ROOT

Reported by:
MS. JANICE O. DARBY
763 Gate Post Drive
Mt. Pleasant, SC 29464
(843) 814-7666

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

APPEARANCES

For the Plaintiff:
ROBERTSON HOLLINGSWORTH & FLYNN
Attorneys at Law
177 Meeting Street, Suite 300
Charleston, SC 29401
BY: MR. PATRICK FLYNN

For the Defendants:
RICHARDSON PLOWDEN
Attorneys at Law
40 Calhoun Street
Charleston, SC 29401
BY: MS. SAMIA NETTLES

ANDERSON REYNOLDS & STEPHENS
Attorneys at Law
37 1/2 Broad Street
Charleston, SC 29401
BY: MR. JONATHAN J. ANDERSON

CARLOCK COPELAND
Attorneys at Law
40 Calhoun Street, Suite 400
Charleston, SC 29401
BY: MR. TYLER WINTON

TURNER PADGET
Attorneys at Law
40 Calhoun Street, Suite 200
Charleston, SC 29401
BY: MS. JENNIE SMITH

TUPPER GRIMSLEY & DEAN
Attorneys at Law
P.O. Box 2055
Beaufort, SC 29901
BY: MS. KATHERINE FERGUSON (by phone)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

INDEX

WITNESS	PAGE
MILLER, JEFF	
By Ms. Smith	460, 608
By Ms. Nettles	476, 607
By Mr. Earhart	582
By Ms. Belton	518
By Mr. Root	503
By Ms. Ferguson	578
By Mr. Anderson	597
By Mr. Kelly	559, 609
By Mr. Winton	536

EXHIBITS:
FOR IDENTIFICATION MARKED
No. 169 Color-coded elevation drawings 598

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

1 Q And you don't recall the substance of
2 that conversation?
3 A Unfortunately, no.
4 Q I guess you said earlier that there was
5 nothing substantive discussed. Is that correct?
6 A I probably said that, yes.
7 Q Sitting here today, you can't recall
8 anything that you-all talked about yesterday. Is
9 that correct? Do you think you talked about the
10 Shipwatch project?
11 A Obviously. The conversation was meant to
12 be kind of an update prior to depositions. And
13 obviously, I relayed to Pat that I had a hurt back
14 and I was doped up. And I know he was going, I
15 believe, through maybe some questions that the
16 attorneys may be asking. But beyond that, I don't
17 remember. A lot of talking. I probably said one or
18 two words.
19 Q You didn't receive anything in writing or
20 any e-mails from Mr. Flynn?
21 A No.
22 Q Earlier in your prior deposition,
23 specifically referenced on page 432 of that
24 deposition, we talked about the process that took
25 place in the drafting of your affidavit, the back

1 think I have any more questions for you at this
2 time.
3 MR. FLYNN: Janice, just for the
4 record, I believe he does have all the documents
5 that he needs. So I'm not aware of any additional
6 documents that I have that he would need. So when
7 he goes through them, if he can't find something,
8 I'm happy to provide it to him. But he has all the
9 reports that I'm aware of.
10 THE WITNESS: So there are no other
11 documents other than what was given to me like two
12 years ago?
13 MR. FLYNN: As far as I -- Yeah.
14 MR. WINTON: I didn't know if you
15 were testifying for him or what's going on here,
16 but --
17 MR. FLYNN: I'm talking to you.
18 Because you asked the question about documents, and
19 I wanted to make sure you were aware for the record
20 that I've provided whatever documents he has. It
21 should be in his files.
22 MR. WINTON: Oh, relative to the
23 affidavit?
24 MR. FLYNN: No. Just whatever
25 documents that I have in my files, particularly

1 and forth between you and Mr. Flynn and the use of
2 handwritten notes by you on a pdf document that you
3 believe was attached and sent back and forth via
4 e-mail. Do you recall that testimony?
5 A Yes.
6 Q I'll represent to you that I looked in
7 the documents, and I could have missed it, but I did
8 not find that correspondence or that pdf document
9 with handwritten notes. Is that something that you
10 may be able to more easily put your hands on or
11 something that you could put your hands on if you
12 looked within your database or a staff member could?
13 A It probably would have been easier to
14 find until Debbie gathered everything. I'm not sure
15 how she's messed up my files. But depending upon
16 the hard copy documents that she has assembled, that
17 may or may not be easy to find.
18 Q I won't tell Debbie you threw her under
19 the bus today, but I'm going to go ahead this
20 afternoon since we probably have some time, if we
21 could talk with her about the possibility of where
22 she thinks it might be, and I'll look with her for
23 that document. Is that acceptable?
24 A That's fine.
25 MR. WINTON: Mr. Miller, I don't

1 relating to Mr. Sisroy. To my knowledge, I've
2 provided everything that he needs. I'm not aware of
3 anything additional that he needs at this time.
4 MR. WINTON: Understood.
5 THE WITNESS: That will be easier
6 then. I've got a certain amount of papers to
7 review.
8 (Lunch recess taken.)
9 E X A M I N A T I O N
10 BY MR. KELLY:
11 Q Mr. Miller, we're back from lunch. Are
12 you ready to proceed?
13 A Yes, sir.
14 Q My name is Britt Kelly. I represent W.C.
15 Johnston Architectural Sales and EFCO Corporation in
16 this case. I assume you're familiar with EFCO?
17 A I am familiar with both, yes.
18 Q And you know Greg Johnston with W.C.
19 Johnston Architectural Sales?
20 A I know him well, yes.
21 Q Do you hold any opinions relating to W.C.
22 Johnston Architectural Sales' involvement in the
23 Shipwatch project?
24 A I don't -- Say that question again.
25 Q Do you hold any opinions in this case

Page 560 1 related to any fault of W.C. Johnston Architectural 2 Sales for the damages or the repair work that you 3 have specified at the project? 4 A Well, I guess the best way to answer the 5 question is that obviously we had EFCO 6 non-impact-rated doors and windows improperly 7 installed on this project. And to what 8 responsibility W.C. Johnston or EFCO had regarding 9 those particular units being put into this building 10 when they weren't supposed to is kind of a question 11 mark. 12 Q Let me try to make sure I fully 13 understand that. So you do not currently hold any 14 opinions relating to any fault of W.C. Johnston 15 Architectural Sales or EFCO may have relating to the 16 installation of non-impact-rated glass products in 17 the buildings at Shipwatch? 18 A Well, I think I said I don't have the 19 information to thoroughly state -- You know, I don't 20 know what W.C. Johnston or EFCO's role was in the 21 project that would place liability on them or not on 22 them. All I know is we've got an inferior, improper 23 code, non-code compliant product that was put in 24 when it shouldn't have been. 25 Q You realize you've been designated by Mr.	Page 562 1 times, and I'll give you the same answer. Until I 2 have a chance -- 3 Q Yes, sir. That question calls for a 4 yes-or-no answer. Can you please give me a 5 yes-or-no answer? 6 A I don't have an answer. I can give you 7 an answer once I review the documents. 8 Q Do you refuse to answer my question with 9 a yes or no? 10 A I think I said will be glad to provide 11 the answer once I have documents to be able to form 12 an opinion to give you a yes-or-no answer. I cannot 13 give you a yes-or-no answer now. I know what your 14 question is. You've said it ten times. Keep saying 15 it. We'll keep going over the same thing. 16 Q You don't have to read too much into it. 17 It's simply a question of do you currently hold an 18 opinion as to whether EFCO or W.C. Johnston 19 Architectural Sales did something improper that led 20 to the installation of non-impact-rated windows and 21 doors in the Shipwatch buildings? 22 A (No response.) 23 MR. ROOT: You're not going to 24 respond to him? 25 THE WITNESS: I've already responded
Page 561 1 Flynn's office as an expert witness for the 2 plaintiffs in this case? 3 A Yes. 4 Q And this case has been pending for a 5 couple of years now? 6 A Whatever the time frame, yes. 7 Q As we sit here today, do you hold any 8 opinions that W.C. Johnston Architectural Sales or 9 EFCO did anything improper that resulted in the 10 installation of non-impact-rated glass in the 11 buildings at Shipwatch? 12 A I think you just asked me that question. 13 Q Yes, sir. You didn't answer it, so I 14 would like you to give me a direct answer. Do you 15 or do you not hold an opinion? 16 A I have not been able to form an opinion 17 without seeing the documentation associated with the 18 windows. Without reviewing the documentation, 19 everything is purely speculative until I see that. 20 Q So you do not hold an opinion as we sit 21 here today as to the fault, if any, of W.C. Johnston 22 Architectural Sales or EFCO related to the 23 installation of non-impact-rated windows or doors in 24 the buildings at Shipwatch? 25 A You can say your same sentence 20 more	Page 563 1 twice. I'm not going to respond again. 2 BY MR. KELLY: 3 Q Mr. Miller, did you understand my 4 question? 5 A I did. I responded to it twice. 6 Q A few minutes have gone by. Do you need 7 some additional time to consider my question to give 8 me a yes-or-no response? 9 A Yeah, I need to have the documents in 10 front of me for me to review, and then I'll answer 11 your question. 12 Q You need to have documents in front of 13 you to give me an answer as to whether or not you 14 hold an opinion related to those entities? 15 A I cannot provide an opinion until I 16 review the documents. 17 Q I'm not asking you to give me an opinion. 18 I'm asking you to tell me whether or not you have an 19 opinion. 20 A I've not reviewed any documents, so I 21 therefore have no opinion. How's that? 22 Q That is a perfectly fine answer. Thank 23 you. 24 A Thank you. 25 Q Do you have any opinions related to the

1 performance of the EFCO products that are installed
2 in the Shipwatch buildings?

3 A I do.

4 Q What are those opinions, please?

5 A The EFCO products do not meet impact
6 resistance and therefore do not meet code.

7 Q Do you hold any other opinions regarding
8 the performance of the EFCO products that were
9 installed or are currently installed at the
10 Shipwatch buildings?

11 A That the sliding glass doors were
12 inadequately fastened. There were no jamb
13 fasteners.

14 Q Have you endeavored to assign fault to
15 anyone for the fact that there are no jamb fasteners
16 at the EFCO products you have observed at the
17 Shipwatch buildings?

18 A I have not assigned blame as of yet.

19 Q Do you hold any other opinions regarding
20 the performance of the EFCO products that were
21 installed in buildings C and D at Shipwatch or
22 currently installed at buildings A and B at
23 Shipwatch?

24 A Since I've not had a chance to review the
25 file, I am going to reserve that there may be other

1 be published in my reports.

2 Q Did any of the water testing performed by
3 Sutton-Kennerly & Associates at the Shipwatch
4 buildings reveal failures with the EFCO products?

5 A I don't believe they did.

6 Q Are you aware of any failure of EFCO
7 products that has led to water intrusion at the
8 Shipwatch buildings?

9 A Through the actual EFCO units, I am not.

10 Q When Sutton-Kennerly & Associates first
11 designed a plan for remediating the issues it found
12 at buildings C and D at Shipwatch, did it intend to
13 reuse the EFCO products that were installed in those
14 buildings?

15 A That was one of the considerations that
16 we had, is to reuse those units, yes.

17 Q When that consideration was I guess still
18 an option or being considered as an option, did the
19 scope of work that Sutton-Kennerly & Associates
20 envision involve removing those windows or doors in
21 order to fix the other problems surrounding the
22 windows and doors?

23 A In that scenario, yes, it was envisioned.
24 That was one of the options that we looked at, if we
25 could get the windows and doors grandfathered in

1 opinions. But for the time being, I'm going to say
2 no.

3 Q Sutton-Kennerly & Associates had water
4 testing performed at the Shipwatch buildings.
5 Correct?

6 A That's correct.

7 Q Did you supervise the water testing at
8 the Shipwatch buildings?

9 A I was aware of all the testing. I didn't
10 supervise it.

11 Q Who did supervise the testing?

12 A I had one of my engineers perform the
13 testing.

14 Q Who performed the testing at Shipwatch on
15 your behalf?

16 A I don't recall.

17 Q Who compiled the reports as to whether or
18 not a test resulted in a failure?

19 A Who provided the reports?

20 Q Yes, sir. Who compiled the reports?

21 A The engineer that did the testing.

22 Q What was Mr. Isaacs' role in that
23 process?

24 A He may have been one of the testers. I
25 just don't recall. All of that information should

1 and/or approved by the building official.

2 Q Under that scenario when you're going to
3 take the windows and doors out of their openings,
4 were you then going to have to go in and beef up the
5 surrounds of those openings?

6 A We were going to have to beef up the
7 surrounds as well as waterproof the surrounds that
8 were not done properly.

9 Q Did I understand you to tell me that you
10 went to the building official at Isle of Palms and
11 attempted to grandfather in those EFCO products so
12 that you could use them?

13 A To grandfather them in and allow them not
14 to be impact rated, I tried that, yes.

15 Q And what was the response from the
16 building department?

17 A That that was not acceptable. If it
18 didn't meet code from an impact-rated standpoint,
19 they had to come out and be replaced with
20 code-compliant windows and doors.

21 Q Did they explain to you why that was not
22 acceptable?

23 A Because these windows and doors do not
24 meet code from an impact performance and they were
25 not going to allow them in the building.

1 Q Is that the only explanation they gave to
2 you?
3 A Yes.
4 Q Did they indicate whether or not that
5 opinion that they gave to you held true for the
6 windows and doors on floors four and five of the
7 buildings?
8 A That held true for every window and door
9 on the project, yes.
10 Q Did you attempt to have them grandfather
11 in at least the doors on floors four and five even
12 if they wouldn't accept the doors and windows on
13 floors one through three?
14 A Yes.
15 Q Did they not agree to do that?
16 A They did not.
17 Q Did they give you a different explanation
18 as to why they would not accept that?
19 A The same reason.
20 Q So their interpretation of today's code
21 is that the doors on floors four and five had to be
22 impact rated as well?
23 A From small missile impact, yes.
24 Q Do you share that belief?
25 A I'm sorry?

1 Q Do you share that opinion?
2 A I'd have to go back and look at the
3 particular language of 2012 IBC, but I'm pretty sure
4 that's the case.
5 Q Did Sutton-Kennerly & Associates give any
6 consideration to using hurricane shutters or some
7 other method to protect the glass from impact?
8 A That was also mentioned to the building
9 official and denied.
10 Q Was there an explanation as to why that
11 was not going to be permitted?
12 A There was, but I don't recall exactly
13 what it was.
14 Q Were any of those discussions in writing
15 with the building official, or were they all oral?
16 A I don't remember. It seems like I had a
17 confirmation e-mail after my meeting with those
18 guys, but I just can't remember.
19 Q Who were you dealing with at the Isle of
20 Palms building department?
21 A William Seabrook.
22 Q Did you have any discussions with
23 Mr. Seabrook as to how it came to be that there was
24 non-impact-rated products installed in the buildings
25 to begin with?

1 A Did I have a conversation with him as to
2 how I knew that they were not impact rated?
3 Q No, sir. Did you have a conversation
4 with him as to how it came to be that that product
5 was installed in the buildings?
6 A My explanation to him was that we had
7 windows put in during the '02 to 2010 time frame
8 that were not impact rated.
9 Q Did he indicate why that was or how that
10 was permitted if it was permitted?
11 A He didn't know how that got permitted.
12 There was no permit.
13 Q Why do you say there was no permit?
14 A Because he had no record of a permit of
15 that.
16 Q Did you deal with anyone else at the Isle
17 of Palms building department as to whether or not
18 they would permit the EFCO products to be
19 reinstalled?
20 A I did have some conversations with -- I
21 think the guy's name is Doug Carr, Kerr, something
22 like that. It seems like initially I spoke with
23 both of those two gentlemen.
24 Q What was Mr. Carr's or Mr. Kerr's
25 position at the Isle of Palms building department?

1 A I don't have their titles in front of me.
2 Q Did you gain an appreciation as to who
3 was his superior or if they had the equivalent role?
4 A I believe Mr. Kerr or Carr, I think, is
5 the head of that division, and I think Seabrook
6 reports to him.
7 Q Is it one or both of them who told you
8 you could not reuse the product?
9 A I don't remember.
10 Q Was consideration given to reglazing any
11 of the EFCO products with impact-rated glass?
12 A There was thought given to that, yes.
13 Q Tell me what went into that thought. Was
14 that something you were involved in or someone else
15 at Sutton-Kennerly & Associates was involved in?
16 A It seems like we pursued every avenue
17 that we felt that we could to try to keep these
18 windows that were performing from a water-resistant
19 standpoint. They just weren't impact rated.
20 It seems like we looked and talked about
21 switching the glass out and how the glass set or fit
22 into the frame and that the glazing pocket was such
23 that it may or may not facilitate that.
24 But I know there was some research and
25 looking to see what, if anything, could be done to

1 facilitate that.

2 Q Was anyone at EFCO consulted as to
3 whether or not impact glass can be installed in any
4 of the EFCO products at Shipwatch?

5 A I believe there may have been. I believe
6 we contacted somebody with EFCO to discuss that.

7 Q Who was that, please?

8 A I'd have to go back to the file. I don't
9 remember.

10 Q Do you believe that was done via e-mail
11 or phone call?

12 A I don't remember.

13 Q Perhaps we should back up. Was that a
14 phone call or a communication that you recall being
15 involved in, or someone had that communication on
16 your behalf?

17 A I believe it was one of my staff
18 engineers pursuing that for me.

19 Q Who was that staff engineer?

20 A I don't remember.

21 Q Was there any discussion with the
22 building official related to the inability to reuse
23 EFCO products because of how much construction work
24 was going to be performed because of the repairs?

25 A I don't believe that weighed in on his

1 EFCO sliding glass doors on projects very
2 successfully, yes.

3 Q And over the last, say, ten years, can
4 you name the projects you can remember where you've
5 spec'd that product?

6 A I put it on the Windemere condominiums,
7 North Myrtle Beach. I believe I put it on the
8 Harbor Inn condos down in Wrightsville Beach. I'm
9 sure there may be others, but those two come to
10 mind.

11 Q Was Windemere new construction or repair
12 work?

13 A It was a remediation project.

14 Q What was scope of that remediation
15 project?

16 A Very similar to this particular scope:
17 Replacement of the cladding, replacement of the
18 windows and doors, coatings.

19 Q All cladding and all windows and doors?

20 A Yes.

21 Q What about the Harbor Inn condos?

22 A That was -- I think they had kind of a
23 combination sliding glass door with fixed panes on
24 the sides that got replaced, coatings, concrete
25 balcony waffle slab repairs, maybe some handrails.

1 decision.

2 Q Have you been involved in construction or
3 remediation projects where you were able to reuse
4 windows or doors?

5 A I'm sure I have in the 25 years of my
6 career. I just don't remember exactly when or
7 where.

8 Q In those cases where you have, do you
9 recall whether or not there was a percentage of
10 construction work that was important to the building
11 official as to whether or not you could remove or
12 replace windows and doors?

13 A I don't recall. It's typically dictated
14 by the entity with the county that you're actually
15 working with. I just don't remember the specifics
16 of these different projects.

17 Q Are you familiar with the EFCO 3015
18 Series sliding glass door?

19 A Somewhat, yes.

20 Q Have you specified it on projects?

21 A I'm sorry. Say that again.

22 Q Have you specified it on projects that
23 you have designed?

24 A I believe that is the model number. I
25 don't have it in front of me. But I have spec'd

1 Q How long ago was that project done?

2 A Harbor Inn, I think, was in '06.

3 Q When you removed the sliding glass doors
4 in the Harbor Inn condos, was the glass removed from
5 every opening, or was some of the glass left in
6 place?

7 A No. The entire unit got removed and new
8 units put in.

9 Q And that was in every condo unit?

10 A At Harbor Inn, I think there were only 12
11 or 16 units, but yes.

12 Q Have you ever provided a design that
13 involved the installation of new EFCO sliding glass
14 doors where not all sliding glass doors or all
15 windows within a regime were being removed and
16 replaced?

17 A Let me think. Yeah, I think that's
18 happened some. I just don't recall what or where.

19 Q How would I figure out what or where
20 those projects were?

21 A I would have to go back through a list of
22 our projects and figure out -- refresh my memory on
23 projects as I look through the database that would
24 involve windows and doors, and then either remember
25 directly from the name of the project or actually

1 try to find the electronic file and go through the
2 scope of work that was performed.

3 Q Do you keep a list of such projects that
4 you've worked on?

5 A We've got a database of all of our
6 projects since about 1998. I don't know that we
7 have the files for those, but we have a database.
8 Some of those I'll be able to remember once I read
9 through the database.

10 Q I'm just curious if in advance I can get
11 a printed copy of whatever those projects are so
12 that I know how extensive they are, if there's 40 or
13 50 or 100 or whatever the number. I'm not asking
14 you to give me a copy today. I'm just wondering if
15 that's a possibility of something that can be done.

16 A No, not today. Are you looking for
17 projects for SKA or projects that Jeff Miller was
18 involved with?

19 Q Projects that you were involved with.
20 So, for example, on my computer software at our law
21 firm I can search by matters I'm assigned to, and I
22 can look back at, say, a ten-year period and see all
23 of the cases. I'm just curious if you have
24 something similar where you can print a list of the
25 projects that you were involved in over the last ten

1 in the future regarding this case, I'm going to
2 reserve my right to ask you questions about those
3 opinions. As of now, I believe I've asked all the
4 questions I can ask of you today.

EXAMINATION

6 BY MS. FERGUSON:

7 Q Mr. Miller, my name is Katherine
8 Ferguson, and I represent Glasstec. I have been
9 here all day listening to your answers, so I'm fully
10 aware that you haven't had time to fully review your
11 files before today's deposition. So some of my
12 questions to you might seem redundant. I can
13 promise you, I'm not trying to be difficult. I just
14 want to ask you some questions as they pertain to my
15 client. Is that okay?

16 A Sure.

17 Q Are you familiar with Glasstec?

18 A I am.

19 Q Do you know the scope of work that
20 Glasstec performed at the Shipwatch project?

21 A I do not.

22 Q Is that because sitting here today you
23 haven't had time to review your file, or you just
24 have no information with regard to Glasstec?

25 A Well, I believe they put in the majority

1 years that would allow you to more easily look and
2 determine if one of those met the criteria that
3 we've been talking about.

4 A Yeah, our database. I should be able to
5 go through the search engine somehow to narrow down
6 remediation projects if they were coded correctly
7 into the system. And then depending upon what they
8 are, that may tell me -- refresh my memory as to
9 what we did on each of those projects.

10 Q I would like to do that. I can make a
11 formal request if necessary. I can follow up with a
12 letter or e-mail, whatever is most convenient.

13 Does Mike Parker still work at
14 Sutton-Kennerly & Associates?

15 A He does.

16 Q Have you had any contact with Mike about
17 the Shipwatch project?

18 A I have not.

19 Q Have you had any contact with Mike about
20 conversations he had with Linda Jernigan before you
21 became involved in the Shipwatch project?

22 A I don't know what Mike and Linda may have
23 conversed on.

24 MR. KELLY: Mr. Miller,
25 understanding that you may have opinions you reach

1 of the glass on the project from '02 to 2010. But I
2 also believe there may have been some other glass
3 folks that put other pieces in. But I believe they
4 put in the majority of the glass.

5 Q I'll represent to you that the last time
6 they performed work at Shipwatch was in 2002.

7 A Okay.

8 Q So is it fair to say that sitting here
9 today you don't really know the scope of the work
10 performed by Glasstec at the Shipwatch project?

11 A I would say that's true.

12 Q And then sitting here today, do you have
13 any opinion as to the work performed by Glasstec?

14 A Since I don't know specifically what they
15 did, obviously I have no opinion.

16 Q Do you believe that you might have a
17 future opinion as to Glasstec?

18 A I would assume if there are documents
19 available that explain what they did during 2002, I
20 can then form an opinion whether they failed to meet
21 the standard of care in their performance. But I
22 would have to review documents to be able to
23 determine that.

24 Q Have you been able to determine if any
25 damage or any alleged damage in the Shipwatch

Page 608 1 work that the roofing contractor may have performed, 2 could the repairs related to the roof be made 3 without the unit owners moving out? 4 A Yes. 5 Q And that goes for every component of the 6 roof work? 7 A I would think so. 8 MS. NETTLES: Then I'll pass you on. 9 Thank you so much. 10 EXAMINATION 11 BY MS. SMITH: 12 Q I have one follow-up question. We were 13 just talking about change order Nos. 1, 2, 3 and 4. 14 When we spoke this morning, you started with No. 2. 15 I just want to clarify. Is there a No. 1? 16 A Yeah, maybe I didn't -- Change order 17 No. 1 is an official document that has been 18 processed. It's an accumulative \$29,000 deduct. 19 And that should be in the file of documents that 20 you-all were given. 21 Change order No. 2 accomplishes something 22 like requests 20 through 40. I'm just guessing. 23 And of that there was an agreed-upon settlement of 24 225. And just needs to be written up by me in the 25 official change order document. But that is a	Page 610 1 buildings, is the fact that those windows and doors 2 are non-impact causing any damage to the building? 3 A In and of itself, I would say no. 4 Q Same question. Prior to the time the 5 windows and doors were removed from buildings C and 6 D, it's my understanding you believe that the 7 windows and doors had non-impact glass. Correct? 8 A That's correct. 9 Q Did the presence of non-impact glass in 10 those windows and doors lead to any damage to 11 buildings C and D? 12 A No damage, fortunately, because we had no 13 hurricane blow through there. But no. 14 Q I think you indirectly answered this, so 15 I want to ask you directly. Do you agree with me 16 that the EFCO window and door products supplied to 17 the Shipwatch project are not defective in design or 18 fabrication? 19 A I think I would make the statement that 20 there was no evidence that those units exhibited 21 leakage during our water testing. I did not see 22 shop drawings of those doors and windows from a 23 design or install standpoint. 24 Obviously, from an install standpoint, if 25 there are no fasteners in the jambs and you've got
Page 609 1 document that summarizes 20 or so different 2 requests. 3 And then change order No. 3 is something 4 like 43 through 65, and it totals \$57,000 after 5 sitting down with the contractor and working that 6 out. That needs to be an official document. But 7 the dollars and the scope and all the items have 8 been gone through and vetted. 9 Change order No. 4, I'm waiting to get a 10 handful of items that the contractor says is his 11 last request. 12 Q So that change order No. 1 has always 13 been the same? 14 A Yes. 15 MS. SMITH: That's it. Thank you. 16 EXAMINATION 17 BY MR. KELLY: 18 Q I have two questions and then I'll be 19 done. Before we wrapped up, I wanted to ask a 20 question. 21 A Yes, sir. Go ahead. 22 Q Mr. Miller, just for clarity purposes, I 23 want to make sure I understand a couple of things. 24 The fact that buildings A and B have 25 non-impact windows and doors installed in the	Page 611 1 fasteners in the sill to a member that's not 2 connected to the structural slab mechanically, but 3 the units themselves exhibited no evidence of water 4 intrusion. 5 Q Do the units themselves exhibit any 6 evidence of a defect? 7 A None that I recall. 8 MR. KELLY: Those are all the 9 questions I have. Thank you, sir. 10 MR. ROOT: This is David Root, 11 counsel for BASF, noting on the record that 12 Mr. Miller's deposition was noticed for today, 13 Wednesday, the 27th, and Friday, the 29th, and that 14 defense counsel have agreed to withdraw the notice 15 for the 29th on the basis that Mr. Miller's 16 testimony today has indicated he's not been able to 17 get to a point to render final opinions on a number 18 of issues and won't be able to get to that point 19 tomorrow. So that notice is withdrawn and Friday is 20 open. 21 (End of deposition.) 22 23 24 25

39 (Pages 608 to 611)

Janice Ohlendorf Darby, RPR
(843) 814-7666 jodarby@comcast.net

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO. 2012-CP-10-3858

OSCAR MENDIONDO, et al.,)
)
Plaintiffs,)
)
vs.)
)
CAROLINA CONCRETE)
SYSTEMS, INC., et al.,)
)
Defendants.

* * * * *

49b97a82-0360-48b0-a0f8-af7173840630

1 photographs are taken looking up adjacent to the
2 flue pipe.

3 Q. And have you done any determination to
4 conclude what -- the source of where the water was
5 getting into the shaft?

6 A. No. SKA has done that.

7 Q. What is your understanding is their
8 conclusion?

9 A. That, I don't know. I would have to go
10 back and look at their report.

11 Q. And you would rely on whatever they
12 concluded as being the issue?

13 A. Yes.

14 THE WITNESS: We're getting close to
15 lunch.

16 MR. COBB: Do you want to eat lunch?

17 THE WITNESS: Yes.

18 MR. COBB: Let's break for lunch.

19 (The deposition went off the record.)

20 BY MR. COBB:

21 Q. I want to finish up and button up a
22 couple of issues and then I'm going pass you. I
23 think by agreement we're going to stop somewhere
24 around 3 or 3:30 today, because we won't finish.

25 When you mentioned earlier about the

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

1 Q. Are you aware of any damage, either to
2 the windows themselves or to any components of the
3 windows or the framing?

4 A. No. We would have to go back and look
5 at the SKA photos. I am aware of damage below the
6 bay windows at C and D.

7 Q. Are those the new bay windows or the old
8 bay windows?

9 A. "New" meaning what?

10 Q. "Old" meaning original to the building;
11 "new" meaning replaced at some point in the decade
12 of the 2000's.

13 A. They appear to be at least reflashed in
14 something -- post-original construction.

15 Q. And you've not done any type of water
16 testing?

17 A. No.

18 Q. Do you have any intentions or plans to
19 do any water testing?

20 A. No.

21 Q. What criticisms do you have with regards
22 to the design of the repairs by Sisnroy?

23 A. I don't know if there was a design of
24 the repairs. It seems to me there should have
25 been drawings showing how to install the doors,

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 90 1 Wiggins? 2 A. No. 3 Q. Do you have any opinions about Carolina 4 Concrete Systems? 5 A. No. 6 Q. Have you had any conversations with 7 anybody who said they worked with Carolina 8 Concrete Systems? 9 A. Not that I recall. I don't believe so. 10 Q. Have you had any conversations with any 11 of the subcontractors about Shipwatch? 12 A. I've had conversations, but I don't 13 think any of it pertained to Shipwatch. 14 Q. Have you had any conversations with any 15 of the experts identified by any of the Defendants 16 about Shipwatch? 17 A. I've had conversations with the folks 18 from SKA. 19 Q. Other than that? Any of the defense 20 experts? 21 A. No. I mean, other than just some casual 22 conversation when we happened to be on-site at the 23 same time. 24 Q. Have you read any of the depositions 25 that have been taken in this case so far?	Page 92 1 mentioned, the window was made larger. I wasn't 2 in that loop as to why it was. So there's 3 definitely something different there. And I 4 believe whatever is happening with the roof, that 5 was a separate contract, meaning with Glasgow (ph) 6 and the homeowners. 7 Q. What is actually being done with the 8 roof? Is the roof being replaced? 9 A. I believe so. But that needs to be 10 confirmed. I've not been involved in that portion 11 of the work. 12 Q. With regards to the length of time for 13 the repairs, have you done any type of analysis to 14 figure out whether or not it's been staffed 15 correctly or sequenced in a way that's optimal? 16 A. No. 17 Q. What are you going to do with regards to 18 the Shipwatch litigation moving forward? 19 MR. FLYNN: Object to the form. 20 A. I'm going to probably go to the site, 21 take more pictures, meaning of A and B, while that 22 work is going on, and I'll review whatever data is 23 provided to me. And I'm sure there will be other 24 things, but I don't have a list right now. 25 MR. COBB: That's all the questions I
Page 91 1 A. No. 2 Q. With regards to the repairs that were 3 done in 2013 and the repairs that are being done 4 now, did you have any role in either coming up 5 with the scope, coming up with the repair 6 methodologies, any role in that? 7 A. No. 8 Q. Based on what you know, would you 9 concede that some of the repairs that are being 10 done to the buildings are outside of the 11 responsibility of any of these Defendants? 12 MR. FLYNN: Object to the form. 13 A. I'm not aware of the full extent of the 14 work that's in the SKA contract. I know there's 15 been some minor changes, such as the bay windows, 16 meaning the size of the glass panels. And there 17 was some work done with regard to the storefront 18 systems at the elevators, and that may be outside 19 the scope of what Carolina Concrete was asked to 20 do. But I don't know the details of those things. 21 Q. Would you concede that there are 22 betterments and upgrades being done on the 23 repairs? 24 A. Not on the exterior wall envelope 25 repairs. On some of the others, as I just	Page 93 1 have for you right now. I'll pass you down 2 the road. 3 THE WITNESS: Thank you. 4 EXAMINATION 5 BY MR. KELLY: 6 Q. Mr. Sherratt, my name is Britt Kelly. 7 I'm going to ask you a number of questions today 8 related to your investigation and your 9 observations at Shipwatch. Most of them will not 10 have been asked or answered yet, but if I ask you 11 a question you've already been asked, I apologize 12 in advance. Have you done any personal 13 investigation as to the performance of the EFCO 14 doors at Shipwatch? 15 A. I have read some historic data, and 16 there were some questions raised as to whether the 17 products from EFCO met the current building code 18 that was appropriate at the time of installation 19 and also whether the units met the DP rating. I 20 think there were actually two products. There 21 were doors and there were fixed glass. 22 Q. What is your understanding -- I didn't 23 mean to cut you off. If you're not finished, 24 please continue. 25 A. Go ahead.

24 (Pages 90 to 93)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 94 1 Q. What is your understanding as to when 2 the EFCO door products were installed at 3 Shipwatch? 4 A. Sometime after June of 2001. 5 Q. Do you have any more specific 6 recollection as to when the doors and how many 7 doors were replaced with EFCO products at 8 Shipwatch? 9 A. I think earlier today we looked at a 10 document, and I believe it said 72 or 75 at that 11 time. 12 Q. How many sliding glass doors are at the 13 Shipwatch buildings? 14 A. I don't have that count. 15 Q. Do you agree with me that it's more than 16 72? 17 A. Yes. 18 Q. Other than the 72 that were replaced at 19 some point in the early 2000's, do you know 20 whether any other EFCO doors were installed at the 21 Shipwatch buildings? 22 A. I don't know that. 23 Q. Have you done any investigation on your 24 own as to the performance of those EFCO doors as 25 it relates to water intrusion through or around	Page 96 1 A. The windows that are somewhat adjacent 2 to the sliding glass doors of the Carolina room or 3 the master bedroom. 4 Q. So it's fixed glass? 5 A. Yes, sir. 6 Q. Do you know when -- do you know how many 7 units received EFCO fixed glass windows on the 8 ocean side? 9 A. No. I have limited information on the 10 EFCO product. What would be good to look at is 11 the installation instructions from EFCO. 12 Q. But you haven't looked at those? 13 A. I haven't located them. If you happen 14 to have them, I would be happy to look at them. 15 Q. Besides any water intrusion analysis, 16 have you performed any investigation as to whether 17 there are any performance problems with those EFCO 18 doors -- excuse me -- EFCO fixed windows that we 19 were just talking about? 20 A. I don't know about the fixed windows. 21 There was some correspondence from Mr. Freeman 22 that the doors, in his opinion, didn't meet the 23 applicable building code. And in reading that 24 information, it seemed to be that he tried to 25 obtain that information from either the
Page 95 1 the doors? 2 A. I have found damage to the wall system 3 around the doors. I cannot tell you anything 4 about whether the door itself has been damaged. 5 Q. Do you hold any opinions as to whether 6 the EFCO doors that were installed at some point 7 in the early 2000's leak as a product itself? 8 A. No. I did not do water testing. That 9 was done by SKA, so it's a better question for 10 Jeff Miller. 11 Q. Any questions I have about whether or 12 not EFCO doors leak can be directed better to SKA? 13 A. Yes. With regard to the product. 14 Q. Yes, sir. Thank you. A similar line of 15 questions, have you done any independent 16 investigation as to whether any of the EFCO 17 windows installed at the Shipwatch project leak as 18 a product itself? 19 A. No. 20 Q. Do you know whether any EFCO windows are 21 installed at Shipwatch? 22 A. Only from what I can read in the 23 historic data. 24 Q. What do you understand to be EFCO 25 windows that are installed at Shipwatch?	Page 97 1 distributor or the factory. And some of the 2 information is that there was a response about -- 3 that -- whichever the product was only had a 4 rating, I think, of 30, when the code was a 5 substantially higher number. But I would have to 6 go back and read that information. 7 Q. Can you try to find that, please? 8 A. There were two documents, from Gary 9 Freeman to Bob Wiggins on one, and to Linda on the 10 other one. The one to Mr. Wiggins was November 3, 11 2010, and to Linda it was November 12, 2010. And 12 they're discussing the design of the product, and 13 they're also referencing the fixed glass. I'll 14 let you look at them. 15 Q. Thank you. I have those in front of me. 16 MR. ANDERSON: Have those been marked? 17 MR. KELLY: The November 3rd e-mail is 18 Exhibit 129, and the November 12th e-mail is 19 Exhibit 133. 20 Q. And I understood your last answer to 21 tell me that someone from EFCO said that their 22 product only had a 30 PSF rating -- or a 30 DP 23 rating? 24 A. Right. The letter says 30 PSF, yes. 25 Q. Do you see anyone from EFCO or W.C.

25 (Pages 94 to 97)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 98 1 Johnson who are listed anywhere on Exhibit 129 or 2 Exhibit 133? 3 A. I just see the name Mr. Broadway. 4 Q. Do you know who Mr. Broadway is? 5 A. No. 6 Q. Do you know if he's an engineer that was 7 retained by either Randy Morgan of Charleston 8 Glass or Lynn Jernigan to do the analysis of those 9 EFCO products? 10 MR. FLYNN: Object to the form. 11 A. What I can read here, that Mr. Broadway 12 did some analysis based on information that a 13 Randy gave him. I don't know who the Randy is. 14 And they were talking about DP ratings or the PSF, 15 and there seemed to be a conflict of whether the 16 appropriate information was given to Broadway from 17 Randy. 18 Q. But you don't know who Randy is, right? 19 A. Not right now, no. 20 Q. And you don't know who Mr. Broadway is? 21 A. Not in detail. Apparently, he did some 22 analysis, but that's the extent of it. 23 Q. Do you have any document to show me that 24 someone from EFCO or W.C. Johnson said, Our 25 product only has a DP rating of 30?	Page 100 1 A. Well, I was called from the property 2 manager. 3 Q. Is it in litigation? 4 A. No. 5 Q. Do you remember the name of the property 6 manager? 7 A. It was Kuester Management, Phil McLeod. 8 Q. What was the issue you were asked to 9 look at by Phil McLeod? 10 A. There were leaks in and around the 11 windows. And the windows -- a sample window or 12 two were removed to see how the installation was 13 as it related to the wall cladding system that was 14 also installed by Baldwin Construction. 15 Q. What did you find? 16 A. The findings were that the leak was not 17 caused by the product. There was an installation 18 problem at the termination of the wall cladding 19 system and the roofing system. 20 Q. Do you know what type of EFCO product 21 that was that you were looking at? 22 A. I don't have the model number, no. 23 Q. Was it a window or a door? 24 A. It was a window. 25 Q. Fixed or operable?
Page 99 1 A. I don't know who at EFCO that Mr. 2 Freeman tried to contact. 3 Q. So you don't have any information to 4 share with me that someone from EFCO told any of 5 the folks involved in these e-mails that their 6 product had a DP rating of 30; is that correct? 7 A. That would be correct. 8 Q. Do you know who W.C. Johnson 9 Architectural Sales is? 10 A. No. 11 Q. Do you know who EFCO is? 12 A. I know the name is a window 13 manufacturer, yes. 14 Q. Have you ever specified EFCO products on 15 any job that you've designed? 16 A. No. I looked at an EFCO window project 17 in Myrtle Beach within the past year or so. But 18 that's my extent of it. 19 Q. What job is that? 20 A. As soon as I think of it, I'll give it 21 to you. 22 Q. Who were you engaged by? 23 A. By the homeowners. 24 Q. Who is the lawyer working for the 25 homeowners?	Page 101 1 A. Operable. 2 Q. Did you make any recommendations in 3 relationship to the use or reuse of that 4 particular window? 5 A. No. The source of the water was 6 identified. The source of the water intrusion was 7 identified, and I made recommendations of what 8 needed to be done to fix it and left that with the 9 property manager and the owners association. 10 Q. What were your recommendations, in 11 general terms? 12 A. The roof-to-wall intersection had to be 13 reflushed, because there were three planes that 14 came together. There was a sloped roof, a 15 vertical wall above and below the drip line and 16 flanking the drip line. So there was work that 17 had to be involved in the roofing and its related 18 flashing and how it was counter-flashed over the 19 wall system. 20 Q. Did your recommendation call for the 21 reuse of the EFCO operable window? 22 A. They were reused. 23 Q. Do you know when those EFCO windows were 24 originally installed at that project? 25 A. Well, it was a repair. I would say

26 (Pages 98 to 101)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 102 1 within the last two years or so. 2 Q. So I understand it correctly, so the 3 buildings underwent a repair in which the EFCO 4 product was installed? 5 A. Correct. 6 Q. And you were called out within the last 7 year, which was about roughly a year after the 8 installation of the EFCO product, to look at the 9 product to determine what was causing the leak? 10 A. Yes. The time frame may adjust a little 11 bit but somewhere in there. 12 Q. So do you know whether or not you've 13 ever specified, other than that project, perhaps, 14 the use of an EFCO product on any project? 15 A. I don't recall. It could have been in 16 the past. I know it was not within the past three 17 or four years. 18 Q. The 72 doors we were talking about that 19 were installed in early 2000, is it your 20 understanding that those doors were installed in 21 the master bedroom opening for each unit on floors 22 1 through 3 of all four buildings? 23 A. I don't know if it was the master 24 bedroom and/or the Carolina room. 25 Q. Just so we're clear, what are you	Page 104 1 installed only at the master bedroom doors of 2 floors 1 through 3 or whether they were installed 3 at the living room area? 4 A. No. I don't know when the other doors 5 were installed. But if you go in the field, there 6 are doors to the living room that are not vintage 7 1985. 8 Q. Did you find any doors in the living 9 rooms on floors 1 through 3 of buildings A, B, C 10 or D that were EFCO product? 11 A. I didn't look for the product 12 identification. So that part I can't tell you. I 13 can tell you that they were newer doors. 14 Q. Would you agree with me that in a number 15 of the units, when those EFCO doors were replaced, 16 wherever they were on the unit, in the early 17 2000s, that the rest of the glass on the 18 oceanfront remained original or prior to the 2004 19 installation? 20 A. That part I don't know. I don't know 21 when the -- we'll call them sidelights. They're 22 not true sidelights, but the fixed glass, when 23 that went in. And there are areas where there are 24 doors -- new doors, meaning new after 1985, if we 25 just use that as original construction, give or
Page 103 1 referring to as the "Carolina room"? 2 A. Call it the living room. 3 Q. Well, if you need to take time to look 4 at any documents, that's fine. But from looking 5 at it -- at the building, would you agree with me 6 that there are 72 openings that are associated 7 with the master bedroom on floors 1 through 3 of 8 the four buildings? 9 A. It's whatever the math is. I mean, I'm 10 not disputing the number. 11 Q. Well, it's important for my next 12 question, so I'm going to need -- you've got some 13 plans sitting around here, I think. 14 MR. FLYNN: It's kind of small. 15 MR. KELLY: Off the record. 16 (The deposition went off the record.) 17 THE WITNESS: 18 A. It looks like there's six per floor. So 19 that math would get you 72. 20 Q. Six per floor, three floors per 21 building, four buildings, comes to 72, right? 22 A. Yes. 23 Q. You're telling me you don't know from 24 your review of the documentation supplied to you 25 by Mr. Flynn or Ms. Jernigan whether those 72 were	Page 105 1 take a couple of years, that are in the living 2 room areas. 3 Q. Do you agree with me that there's at 4 least one unit on each building that when the EFCO 5 doors were installed in 2003 or 2004, whenever it 6 was, still had glass from prior to 1995 installed 7 in either the door or the fixed glass on the 8 oceanfront side? 9 A. That part I don't have information to 10 give you an answer on. 11 Q. Based on your investigation, your 12 observations, you can't tell me whether any of 13 those units had glass in them that predated 1995? 14 A. 1995? 15 Q. Yes, sir. 16 A. There were some original doors. If 17 we're talking -- I use the terminology the 1985 18 doors. 19 Q. That's fine. 20 A. But we're talking about the same 21 vintage; is that correct? 22 Q. The reason I used 1995 is because I 23 don't want to discount the possibility that after 24 Hugo, perhaps one door or one window was replaced 25 with some other piece of glass. So that's why I

27 (Pages 102 to 105)

Page 106 1 use the 1995 versus 1985. 2 A. There are some doors that are an older 3 vintage than what was installed in the 2000 era. 4 Q. Okay. And were those doors -- did they 5 contain impact glass? 6 A. No. 7 Q. Do you see other fixed windows that were 8 installed at Shipwatch prior to the 2000s that did 9 not contain impact glass? 10 A. I did not survey that. 11 Q. But you don't recall, just from looking 12 at the product, whether or not there was impact 13 glass or not impact glass? 14 A. I know there were some windows on the 15 walkway side that were not impact. But as far as 16 the fixed glass sections, I didn't survey that. I 17 can go out in the field and look. 18 Q. What is the purpose of impact glass? 19 A. It's a requirement similar to a shutter, 20 to keep projectiles from going through it and then 21 allowing the force of the wind to the interior of 22 the building. 23 Q. Why is the force of the wind to the 24 interior of the building important? 25 A. It creates a better structure for	Page 108 1 nonimpact glazing? 2 A. The building code. 3 Q. What about the building code? 4 A. The building code, as Mr. Freeman read 5 it, that was applicable at the time, required 6 either shutters or impact glass. 7 Q. Well, Mr. Freeman was reading a code 8 that was in effect in 2010, correct? You can have 9 my copy. 10 A. Can I see the other one? 11 Q. Yes. 12 A. The date of his memo, yes, is 2010. He 13 was talking about buildings A and B of the current 14 building code. 15 Q. Unfortunately, we don't have any e-mails 16 from him or any other architects or engineers from 17 the 2003 or 2004 time period like this, right? 18 A. You may. I don't. 19 Q. If I did, I promise you I would show 20 them to you. So the building code Mr. Freeman was 21 talking about in 2010 very well could be a 22 different building code than you're saying the 23 contractors had to adhere to in 2003 or 2004, 24 correct? 25 A. I don't believe so.
Page 107 1 resistance to the hurricane winds. If you allow 2 the force of the wind in, the wind is going to be 3 looking for a place to get out, and then it's 4 going to basically explode the opposite wall. 5 Q. So in the early 2000 time frame, when 6 some of this new EFCO product was being installed, 7 the 72 doors we talked about, there would have 8 been a number of openings at Shipwatch that would 9 have contained glazing that was not 10 impact-resistant, correct? 11 A. There would have been some, yes. 12 Q. That nonimpact-resistant glazing, that 13 was either original to the building or at least 14 predated the 2000 work, could be blown out by 15 wind-blown debris, correct? 16 A. Yes, it could. 17 Q. And when that product got blown out, the 18 forces that you're talking about that would be 19 imposed on the building would be imposed because 20 that product was blown out, correct? 21 A. That's correct so far. 22 Q. So what difference does it make if the 23 product that was installed in the early 2000's, 24 the EFCO product, was impact or nonimpact if the 25 -- a number of other windows and doors contained	Page 109 1 Q. Why not? 2 A. Just from my experience. Once it 3 changed to the IBC, there were drastic changes 4 from the '97 version and the adoption of the 2000 5 code we talked about earlier this morning. There 6 have been some minor changes, but I don't believe 7 the changes applied to the missile test. 8 Q. So you think the 2000, the 2003 and the 9 2006 International Building Codes would be the 10 same as it relates to impact-resistant glass? 11 A. Or very similar. 12 Q. Do you know -- or have you seen any 13 documents to show you what Carolina Concrete or 14 the window installer ordered in terms of window 15 and door products? 16 A. There was some reference to that in the 17 two documents you just had. 18 Q. Okay. Do you want to see those again? 19 A. Yes. Thank you. In the letter of 20 Freeman to Jernigan of November 12, 2010, in the 21 first paragraph, there's reference to two 22 different EFCO systems as it pertains to the size 23 of the structure, meaning the frame of the unit. 24 And in just reading the words, according to EFCO, 25 the system that they manufactured that has been

28 (Pages 106 to 109)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 110 1 tested to meet the impact requirements is the 2 system S526 system. The size of the S526 frame 3 member is five-by-two-and-a-half. The size of the 4 frames that are being used at Shipwatch are 5 four-and-a-half-by-two in size. 6 That's the extent of where apparently 7 there's a difference in the product that was made 8 for impact glass versus nonimpact. 9 Q. Are you inferring something from that as 10 to what was actually ordered from EFCO? 11 A. The ordering part, I don't think I have 12 information on it. I don't recall seeing an order 13 sheet. 14 Q. In fairness, you have not been produced 15 documents from EFCO, correct? You have not been 16 provided documents -- 17 A. No. That's what I would like to see, 18 because I also would like to see the attachment 19 requirements. 20 Q. You have not been provided documents 21 produced by W.C. Johnson Architectural Sales in 22 this case? 23 A. I have not. 24 Q. Have you been produced documents or 25 provided documents produced by Charleston Glass	Page 112 1 buildings? 2 A. It only references 4, but those are the 3 townhouse configuration, and the guest bedroom is 4 on the -- call it the back side or the walkway 5 side of the building. 6 Q. Okay. 7 A. So that seems to substantiate GBR 8 meaning guest bedroom. 9 Q. Does that help you understand anything 10 about what was actually ordered from W.C. Johnson? 11 A. Not ordered. But we've been talking 12 about 72 of them. It seemed that there was more 13 ultimately done at the project. 14 Q. That's a good segue. Exhibit 132 is a 15 document that we marked previously in Ms. 16 Jernigan's deposition. 17 A. Okay. 18 Q. Have you seen that document before? 19 A. That, I don't know. I've seen reference 20 to this vista wall before there. 21 Q. In reviewing that document, do you gain 22 the impression that Randy Morgan and Charleston 23 Glass knew they were purchasing a nonimpact 24 product for use at the Shipwatch project? 25 A. Yes.
Page 111 1 Company? 2 A. No. 3 Q. So you haven't seen the order forms from 4 Charleston Glass to W.C. Johnson? 5 A. I have seen some documentation, but I 6 don't recall seeing the order form. 7 Q. I'm going to hand you what we've marked 8 as -- unless you need to keep looking; that's 9 fine. 10 A. I'm looking at a chart that was provided 11 to me as to a sliding glass -- sliding doors 12 replaced at Shipwatch, and it goes through 13 buildings A, B, C and D. And it looks like all of 14 the master bedroom sliders were replaced between 15 '08 and 2011. But there were living room sliders, 16 or the Carolina room, whatever we want to call it, 17 that were replaced in buildings A, B and D. And 18 they have a reference, GBR -- whether that means 19 guest bedroom -- and that part I don't know what 20 -- but that might be a reasonable guess. And it 21 shows replacement in years '08 through '11. So 22 that would be more than the 72 that we talked 23 about. 24 Q. It would have been. And those are 25 limited to floors 4 and 5, right, on the five	Page 113 1 Q. Do you have any information to share 2 with me otherwise, that the people purchasing the 3 product from EFCO or W.C. Johnson did not 4 understand they were purchasing nonimpact glazing 5 products? 6 A. No. Based on that document, they were 7 purchasing it. But they were also referencing the 8 '97 code in 2010, if I'm not mistaken. Is that 9 the date on the letter? 10 Q. I believe that's right. 11 A. Yes, sir. November 11, 2010. 12 Q. In 2010, is it your understanding of the 13 building code that you could still use a 14 nonimpact-rated product as long as you had 15 shutters? 16 A. You could have appropriate storm 17 shutters, yes. 18 Q. Are you critical of EFCO or W.C. Johnson 19 Architectural Sales for selling their customer 20 nonimpact-rated glazing products? 21 A. If they're basing it on the '97 code, 22 yes. 23 Q. If who is basing it on the 1997 code? 24 A. The author of that document we just 25 read.

29 (Pages 110 to 113)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 114 1 Q. Do you have any information to share 2 with me that W.C. Johnson Architectural Sales or 3 EFCO had any idea as to what building code 4 applied? 5 A. Clearly, the local distributor should 6 know what building code was applicable. 7 Q. Do you know where W.C. Johnson 8 Architectural Sales is located? 9 A. No. 10 Q. Why do you say, clearly a local 11 distributor should know that? 12 A. Because he knows exactly where the 13 product is going. There could be an argument from 14 a manufacturer that says, we make windows for all 15 over the U.S., just as an example, and we don't 16 know where it ends up. And there may be some 17 argument there that local codes are different in 18 other areas of the country. 19 Q. You told us today that you don't know 20 what the 2000 building code says without looking 21 at it, right? 22 A. No. I need to refer back to it. 23 Q. You don't know what the 2003 building 24 code says without looking at it? 25 A. Same thing.	Page 116 1 A. I don't think you put the caveat of 2 construction litigation. I would agree that there 3 are architects in other areas of the country that 4 may not be familiar with the requirements of the 5 International Building Code because they may 6 operate under some other code or they don't even 7 have a code in that municipality. 8 Q. A building department official can give 9 a variance for a code or applicability of certain 10 sections of the code, correct? 11 A. Yes. 12 Q. How would a distributor of product know 13 whether a building department official has given a 14 variance to a contractor or not? 15 MR. FLYNN: Object to the form. 16 A. The distributor may not know, but you 17 had asked the question as to what the requirements 18 are from the person placing the order, which, in 19 this case, it looks like it's the general 20 contractor. 21 Q. Have you ever worked for a window or 22 door distributor? 23 A. No. 24 Q. Have you ever worked for a product 25 distributor?
Page 115 1 Q. The same with 2006? 2 A. Yes. 3 Q. You're a licensed architect? 4 A. Yes. 5 Q. And there are Registered Professional 6 Engineers out there that can't tell you what the 7 code says without looking at it, right? 8 A. You said, are there? 9 Q. Yes. 10 A. Yes. I would think everybody would want 11 to go back and look at the particular section. 12 Q. In fact, there are engineers and 13 architects out there who can look at it and not 14 tell you what it actually says, in relationship to 15 impact-resistant glass or DP ratings, correct? 16 MR. FLYNN: Object to the form. 17 A. And not tell you? 18 Q. Right. 19 A. I don't understand the question. 20 Q. There are architects and engineers who 21 aren't as familiar with what the DP rating 22 requirements are and the impact-resistant glass 23 requirements as perhaps those who are commonly 24 involved in construction litigation; would you 25 agree with that.	Page 117 1 A. No. 2 Q. Have you ever owned a company that is in 3 the business of distributing products? 4 A. No. 5 Q. Are you going to be able to quote me a 6 source that says a duty exists for a distributor 7 of a product to know what building code is in 8 effect for a certain time period and a certain 9 installation method? 10 MR. FLYNN: Object to the form. 11 A. It's my opinion they should know. 12 Q. Why do you hold that opinion? 13 A. If that's not valid, how would they 14 order the correct product when there are different 15 product lines? 16 Q. Do you hold that opinion because you've 17 read that in some peer-reviewed publication? 18 A. No. 19 Q. Do you hold that opinion because someone 20 in the industry has indicated to you that's the 21 way it's done? 22 A. I don't hold that, but that circumstance 23 has taken place, yes. 24 Q. So is there some source that you believe 25 I can reference to tell me that a duty exists for

30 (Pages 114 to 117)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 118

1 a product manufacturer or distributor to know what
2 building code is in effect for a certain time
3 period for a certain application method?

4 A. I don't know if there's a written
5 document. What I can tell you, there are other
6 window distributors that do that research before
7 the order is placed in the coastal environment.

8 Q. In 2010, Linda Jernigan was the property
9 manager for Shipwatch, right?

10 A. I believe so.

11 Q. And she was told that the product she
12 was getting for installation in 2010 contained
13 nonimpact glass, right?

14 MR. FLYNN: Object to the form.

15 A. That's what the document says. If
16 that's the same one we just referenced.

17 Q. Yes, sir. Look at it if you need to.
18 It's Exhibit 133. That's something you looked at;
19 it's in your file, right, Exhibit 133?

20 A. Not with the stamp on it. But I believe
21 the document is.

22 Q. The e-mail is in your file? You
23 referenced it earlier, right?

24 A. Yes.

25 Q. That's something you considered in

Page 120

1 MR. FLYNN: Object to the form.

2 A. I don't understand the question. It
3 seems there's two questions there.

4 Q. We'll try it again. Do you agree with
5 me that a customer has the right to determine
6 whether to purchase impact- or nonimpact-rated
7 glazing?

8 MR. FLYNN: Object to the form.

9 A. No. No. Because the customer could be
10 a layperson and not involved in these type things.
11 They need to rely on some professional to tell
12 them or the distributor that's providing the
13 product to the area.

14 Q. Is a contractor a sophisticated --
15 excuse me -- is a window installation contractor a
16 sophisticated business entity?

17 A. It should be.

18 Q. That would be familiar with what
19 building codes may apply to the installation of
20 glazing and window products?

21 A. They should be.

22 Q. Would you agree with me that the EFCO
23 products applied at the project are not defective?

24 A. No. Because, in my opinion, they should
25 have impact glass.

Page 119

1 forming your opinions in this case, right?

2 A. I don't disagree with you of what's in
3 paragraph No. 1, with the content of the e-mail.

4 Q. It says, "The aluminum storefront
5 glazing system that has been installed at
6 oceanfront window openings of the first three
7 floors of buildings A and B does not meet the
8 current building code requirements for
9 impact-resistant systems"?

10 A. That's correct.

11 Q. And Shipwatch and Ms. Jernigan did not
12 reject these windows that were installed at
13 Shipwatch in 2010?

14 MR. FLYNN: Object to the form.

15 A. I don't know about that. I don't know
16 what discussion has happened after that letter.

17 Q. You know those windows are still in
18 place out there, right?

19 A. Right. But I don't know any other
20 discussion about it.

21 Q. Well, in 2010, Ms. Jernigan is told that
22 the product is nonimpact. Do you agree with me
23 that a customer has a right to make its own
24 decision as to whether to purchase nonimpact or
25 impact-rated products?

Page 121

1 Q. Is there anything wrong with the product
2 itself, if the building code that's in effect is
3 the 1997 Standard Building Code?

4 A. If we set aside the glass to answer your
5 question?

6 MR. FLYNN: Object to the form.

7 Q. No. If the 1997 Standard Building Code
8 was in effect at the time all the EFCO product was
9 installed, is there anything defective about the
10 EFCO product that was installed at the Shipwatch
11 project?

12 MR. FLYNN: Same.

13 Q. You understand --

14 A. I can't answer that until I go back and
15 confirm with the '97 code.

16 Q. I'm not asking you to agree or disagree
17 which code is in effect. I'm asking you to assume
18 that the 1997 Standard Building Code was in effect
19 at the time the EFCO products were installed at
20 Shipwatch; assuming that -- realizing you can
21 disagree with that assertion later -- assuming
22 that to be the case, is there anything defective
23 with the EFCO products that were installed at
24 Shipwatch in the 2000s?

25 A. That, again, I can't answer it until I

31 (Pages 118 to 121)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 122 1 go back and reread the requirements in the '97. 2 Q. I follow you. So you're not sure 3 whether the 1997 Standard Building Code permitted 4 the use of nonimpact glass? 5 A. I believe the '97 did, but before I can 6 answer your question, I want to go back and read 7 the appropriate sections. 8 Q. Which sections? What in general? 9 A. As to the requirement for shutters or 10 impact glass. 11 Q. Do you have any information to share 12 with me that W.C. Johnson Architectural Sales or 13 EFCO told the contractors or the owner that they 14 can't use shutters at Shipwatch? 15 A. I have no information on that. From a 16 code standpoint, you could use an appropriate 17 shutter. 18 Q. The fact that the EFCO product was 19 nonimpact-rated doesn't make it defective if you 20 use shutters, right? 21 A. That part would be correct. 22 Q. So you could take the EFCO products that 23 were installed at Shipwatch and use shutters, and 24 your opinion would be that the EFCO products are 25 not defective?	Page 124 1 -- to come to a conclusion as to what their duty 2 was or was not? 3 A. One would hope that if they're selling a 4 widget -- we'll do this hypothetically -- that if 5 a distributor is selling a widget, that he is 6 instructed by the manufacturer how the widget 7 should be installed so that can be passed on to 8 the distributor's client. And the pros and cons 9 of the product, meaning what can it perform? So 10 there is some education. I don't think there's -- 11 that that education goes down to possibly the 12 mechanic in the field or the warehouse personnel. 13 But somewhere in that organization, that 14 information has to come from the manufacturer to 15 the person who is wholesaling it so it can be 16 passed on to the retail customer. 17 Q. Do you have any information to share as 18 to whether W.C. Johnson Architectural Sales or 19 EFCO recommended or suggested the use of the 20 products that are incorporated at Shipwatch? 21 A. I don't know who recommended the 22 product. From my information, the product, 23 though, that was shipped to the job, in my 24 opinion, did not comply and does not comply with 25 the applicable code at the time.
Page 123 1 A. Based on the information that I have on 2 the product, that part would be correct. 3 Q. So your opinion is really that the 4 application of the product was an error and not 5 the product itself? 6 MR. FLYNN: Object to the form. 7 A. The product, as installed, is defective. 8 If you talk about the application, then clearly 9 the distributor should have known where the 10 product was going. 11 Q. What is your basis for that statement? 12 A. Just using your question. 13 Q. I'm not sure I follow that. 14 THE WITNESS: Read the question back. 15 THE COURT REPORTER: "So your opinion is 16 really that the application of the product was 17 an error and not the product itself?" 18 A. And that's where I'm saying the 19 distributor should have known what the application 20 was, where it was going. 21 Q. Do you know anything about the 22 education, training or experience of the employees 23 of W.C. Johnson Architectural Sales? 24 A. I do not. 25 Q. Don't you think that's relevant upon a	Page 125 1 Q. And you agree with me that if Charleston 2 Glass and Carolina Concrete knew they were 3 purchasing nonimpact-rated product, then EFCO has 4 no responsibility to provide them anything other 5 than what was ordered? 6 MR. FLYNN: Object to the form. 7 A. I think you left out the distributor, 8 though, right? 9 Q. Yes, sir, intentionally. I understand 10 your opinion on that. I was trying to move on. 11 A. I think the information trail goes right 12 down the line, just as I was trying to explain to 13 you in the hypothetical situation. It's got to 14 come from the entity that produces the widget all 15 the way down to the retail customer, which, in 16 this case, would be whoever is installing the 17 product. 18 Q. I thought a minute ago you told me that 19 you thought the case could be made for a 20 manufacturer had no responsibility to know what 21 code was in effect at the time his product was 22 installed in the field. 23 A. No. We're now talking about the product 24 itself, what it can do. That's the way I read 25 your question.

32 (Pages 122 to 125)

Page 126 1 Q. Okay. 2 A. Meaning if you make a window product, 3 just hypothetically, and you only make nonimpact 4 product, you ought to know that in a coastal 5 environment the impact product is required. I've 6 run across that with other manufacturers that come 7 into continuing ed programs and, you know, they 8 have a great product but it's not code-compliant. 9 They ought to know that before they go to sell it 10 into a product or some of the products you see 11 marketed from Window World. They ought to know 12 that their product is not code-compliant. 13 Q. Well, specifically looking at this case, 14 EFCO made impact-rated products. Right? 15 A. That's what it appears to be, yes. 16 Q. A customer could have purchased 17 impact-rated products or nonimpact-rated products? 18 A. The customer being the distributor? 19 Q. The customer being the window installer. 20 A. Yes. 21 Q. And you agreed with me a minute ago that 22 the window installer knew it was purchasing 23 nonimpact-rated products? 24 A. Yes. 25 Q. Is it your opinion that EFCO did nothing	Page 128 1 A. That's not what this is referring to, I 2 don't believe. 3 Q. Right. 4 A. This is talking about the design 5 pressure and if there's stiffener components that 6 are required. My point being, there was some 7 discussion going on, at least at 12/29/08, about 8 what are the requirements of the EFCO product? 9 What requirements do they need to meet? 10 Q. Well, there's a question about the 11 design pressure, right? 12 A. That's a question. 13 Q. That's the only question? 14 MR. FLYNN: Object to the form. 15 Q. Is there something on there that talks 16 about impact glass or nonimpact glass? 17 A. No. 18 Q. Is there anything on there that talks 19 about what building code is in effect? 20 A. No. My point being that there was a 21 dialogue going on between the manufacturer and the 22 sales company, and this was back in '08. 23 Q. About how to assemble the product? 24 A. More how the manufacturer needed to 25 design and construct the product.
Page 127 1 wrong in supplying nonimpact-rated products if its 2 customer intentionally purchased nonimpact-rated 3 products? 4 MR. FLYNN: Object to the form. 5 A. No, I don't. If you look at the 6 document from Shannon Andrews, who is a project 7 manager at EFCO, which is a Pella company, and it 8 appears that it went to james@wcjsales.com, and 9 Pella or EFCO is saying Shipwatch, and she goes on 10 to say, "I need to know the design pressure on 11 this to determine the length of the stiffener and 12 if steel is required. We have priced it that way 13 based off of the made-up design pressure used on 14 the quote" -- or it reads "quote takeoff," I'm 15 sorry. "Now we're actually going to build 16 something. I'm going to need a real number." So 17 there was some discussion from the manufacturer, 18 at least down to James at WCJ Sales. 19 Q. As to design pressure? 20 A. Well, as to the design pressure, but, 21 more importantly, how the window was to be built. 22 Q. There's no discussion as to whether -- 23 what code is in effect because we need to know 24 whether to build those as nonimpact or impact 25 glazing, right?	Page 129 1 Q. For design pressure requirements? 2 A. That's what this says, yes. 3 Q. Are you critical in any way of whether 4 the product does or does not meet the design 5 pressure requirements required by the building 6 code? 7 A. The DP rating should have been more than 8 30. That doesn't give you numbers that I can 9 respond to. 10 Q. Do you know what the design pressure 11 rating requirements -- excuse me -- start again. 12 Do you know what the design pressure ratings are 13 for the EFCO products that were supplied in 2004? 14 A. Only from reading correspondence that -- 15 from Mr. Freeman. 16 Q. Okay. 17 A. I think the discussion there was that it 18 was, give or take, a 30, and there was some 19 inquiry to another entity that talked about that 20 it should have been at least a 45. 21 Q. I saw you and Mr. Flynn looking earlier 22 at some blue pieces of paper that contained some 23 EFCO literature. Do you have that? 24 A. These? 25 Q. No. They were blue pages. The copy

33 (Pages 126 to 129)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 130 1 itself was blue. 2 A. This pile? 3 Q. I don't know. 4 MR. FLYNN: I've got an extra copy. 5 BY MR. KELLY: 6 Q. This is what I was talking about. Have 7 you seen a document that looks like that? 8 A. I don't recall seeing this document. 9 Q. What about the one we just put in front 10 of Mr. Flynn, the blue pages I was talking about? 11 A. These came about because I had asked if 12 he had any information on the installation 13 requirements, particularly as it applied to 14 attachment at the jambs. In my visit of the past 15 two times into the field, what has been observed 16 is, if you take a 5-in-1 tool and run it down the 17 jamb between the window unit, meaning that 18 product, and the buck that's forming the rough 19 opening, it doesn't get interrupted by a fastener. 20 And that's where this all came about, because I 21 didn't have any installation instructions. You 22 and I talked about that earlier. 23 Q. Gotcha. 24 A. So that's how that came about. Now, I 25 scanned this. I didn't see an answer to my	Page 132 1 Q. I'm going to hand you this document we 2 were referring to a moment ago, which is the EFCO 3 Series 3015 Sliding Glass Door Report created by 4 Construction Consulting Laboratory International, 5 and there's a Bates stamp, Charleston Glass 87, in 6 the bottom right-hand corner. That's the page I 7 want to reference. You can look at however much 8 of it you would like. 9 A. And your question is? 10 Q. I think my question was, is there a 11 correlation between 90 PSF and a DP rating? 12 A. Yes. 13 Q. What is the correlation? 14 A. I can't give you the engineering aspect 15 of it. 16 Q. Are you qualified to testify about what 17 the design pressure rating should be on the 18 project? 19 MR. FLYNN: Object to the form. 20 A. With regard to if it's in compliance 21 with the applicable building code, yes. 22 Q. Okay. Are you qualified to give an 23 opinion as to what the DP ratings of the EFCO 24 products installed at Shipwatch are? 25 A. I don't see that listed here.
Page 131 1 question. 2 Q. Can I see that white -- 3 A. Yes, sir. 4 Q. Just for the record, this is an EFCO 5 Series 3015 Sliding Glass Door Report produced by 6 Construction Consulting Laboratory International. 7 Your testimony was you had not seen this document 8 before? 9 A. I don't believe I've seen that, sir. 10 Q. Do you know what design pressure rating 11 was required for the installation of the EFCO 12 sliding glass doors in 2010? 13 A. Somewheres in the 45 to 50 range. 14 Q. Do you know what design pressure rating 15 was required for the installation of those fixed 16 window units on the ocean side of the buildings in 17 the 2010 time period? 18 A. It should have been the same. 19 Q. What does 90 PSF mean? 20 A. I would need to look at the document. 21 Q. Was there a general correlation between 22 numbers -- a number with the PSF and DP ratings? 23 A. There is, but you have to look at the 24 negative and the positive. And you have to look 25 at the size of the unit.	Page 133 1 Q. My question was, are you qualified to 2 give that opinion? 3 MR. FLYNN: Same objection. 4 A. I can get the opinion. 5 Q. How do you get the opinion? 6 A. If I was designing it, I would go to the 7 structural engineer. 8 Q. To get the opinion of what the door or 9 window product's DP rating is? 10 A. Yes. But, more importantly, if the 11 rough opening is framed, to take the rating of the 12 door or the window. 13 Q. Well, that doesn't have anything to do 14 with the door or window product itself, does it? 15 A. Well, it does for the end product. If 16 the rough opening was not framed such that it was 17 compliant with the requirements of the door or 18 window unit and the applicable building code, then 19 you could put a door in the hole and it would 20 still not work. You have to look at all of those 21 aspects. 22 Q. Well, a window manufacturer or 23 distributor has no responsibility for framing the 24 rough opening that's going to receive a door or a 25 window, does it?

34 (Pages 130 to 133)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 134 1 MR. FLYNN: Object. 2 A. The window manufacturer? 3 Q. Right. 4 A. No. Not as far as the actual framing. 5 But the window manufacturer would normally give 6 deflection limits, meaning you could not put a 7 stiffer product in a hole where the rough opening 8 is going to flex. The window manufacturer, 9 through its attachment requirements, would also 10 tell you the performance of what the frame needs 11 to be. It wouldn't typically tell you it has to 12 be metal stud or wood stud, just as an example. 13 It would tell you the requirements that that 14 opening has to comply with in the performance of 15 the opening. 16 Q. Are windows and doors typically shipped 17 with information about their DP rating? 18 A. They should be. 19 Q. And aren't those ratings typically taken 20 from the test report like you're looking at? 21 A. From the information here, yes. 22 Q. So the information to determine what the 23 DP ratings of the EFCO doors are should be right 24 there in your hands? 25 A. No. The DP rating, typically, at least	Page 136 1 A. No. 2 Q. Sir, are you offering any opinions that 3 there are any issues with the DP ratings of the 4 EFCO doors or windows at Shipwatch? 5 A. If the information shows that it didn't 6 comply with the applicable building code, then, 7 yes, I will. 8 Q. As we sit here today, do you have any 9 information to share that the product supplied did 10 not meet the DP ratings in the building codes that 11 were in effect at the time the Shipwatch projects 12 were constructed? 13 A. No. I relay to the Gary Freeman 14 documents, and I'm trying to find the documents 15 from the manufacturer that we already talked 16 about. 17 Q. And that test report I just showed you 18 for the 3015 Series doors you don't think helped 19 you at all in determining whether or not the DP 20 ratings for the doors installed at Shipwatch are 21 appropriate? 22 A. I didn't see it spelled out on that 23 document. 24 MR. FLYNN: Did we mark that? 25 MR. KELLY: I did not mark it. I think
Page 135 1 nowadays -- and I can't tell you what EFCO did 2 back in '04, but there's a sticker on the window 3 unit. 4 Q. Where do you think the number for that 5 sticker comes from? 6 A. From the manufacturer. 7 Q. Where does the manufacturer get the 8 number? 9 A. They design the product. 10 Q. Right. Well, how do they determine the 11 number through their design of the product? 12 MR. FLYNN: Object to the form. 13 A. That's from their engineer. 14 Q. You don't know, is the answer, right? 15 A. No. The answer is -- to the question is 16 from the engineering and the design of the 17 product. 18 Q. Have you ever designed a window? 19 A. No. You asked me that. 20 Q. I think I asked you if you ever worked 21 for a distributor. Have you ever designed a door? 22 A. No. 23 Q. Have you ever fabricated a door? 24 A. No. 25 Q. Have you ever fabricated a window?	Page 137 1 I referenced the Bates label. 2 MR. FLYNN: You did. So I don't need 3 it. It's the Charleston Glass doc. 4 BY MR. KELLY: 5 Q. Can an owner pull a building permit? 6 A. In some cases, yes. 7 Q. And they do in some cases, right? 8 A. In some cases. 9 Q. Do you have any knowledge as to Ms. 10 Jernigan's familiarity with the building 11 department at Isle of Palms? 12 A. No. 13 Q. Do you have any knowledge as to Ms. 14 Jernigan's familiarity with the building permit 15 process at Isle of Palms? 16 A. No. 17 Q. Do you know whether any of the units at 18 Shipwatch have hurricane shutters? 19 A. I do not know. There's one unit that 20 has some type of a track at the sill but nothing 21 at the head. But to answer your question, I don't 22 know. 23 Q. What about before the repairs were done 24 at building C and D; do you know whether any of 25 those units had hurricane shutters on them?

35 (Pages 134 to 137)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 138 1 A. Not that I recall. 2 Q. If any of the units had hurricane 3 shutters, would that address the concern or 4 criticism you had about the use of nonimpact 5 glass? 6 A. It could. 7 Q. Why do you qualify that it could as 8 opposed to would? 9 A. Because I don't know what the design of 10 the shutter is. 11 Q. I don't know enough about shutters. So 12 can you explain to me why that's important? 13 A. Well, someone may figure that a cosmetic 14 shutter is suitable as the substitution. And in 15 most cases, that is not the case. If it is a true 16 storm shutter that resists the proper impact, 17 meaning the missile test, then, yes, that could be 18 a substitute for not having impact glass. 19 Q. What is a cosmetic shutter versus -- 20 like I'm used to these roll-out, sort of 21 steel-looking things that come around the doors? 22 A. Some little cosmetic shutter on each 23 side of the window, whether it operates or not. 24 Q. Could the owners use plywood to protect 25 their glass?	Page 140 1 A. They could use plywood early on. 2 Q. So the contractor could have told them, 3 You can use plywood in the event of a storm to 4 protect your glass? 5 A. Then the general contractor, by the 6 building code, had to provide the shutters and 7 have them all numbered and put the studs in the 8 wall such that they could be put up, and the 9 product needs to be stored on-site someplace. 10 Q. And you think it's reasonable for a 11 distributor of building materials to know the 12 terms of the contract and the field directives 13 between a contractor and an owner? 14 A. I think it's incumbent upon the 15 distributor and the retailer, who may be the 16 installer, to know that something needs to be 17 there. Either to say, You need to put up 18 hurricane shutters, or, This needs to be impact 19 glass. 20 Q. Can you tell me why you believe it's 21 incumbent upon the distributor to do that? 22 A. If the distributor knows where it's 23 going, and he should, then I think that's part of 24 the service. 25 Q. Have you ever sat on a board or any sort
Page 139 1 A. At least in the beginning, I believe, 2 yes, they could. Whether it's currently approved 3 or not, that part, I don't know. Because that 4 would be a decision from the building official. 5 Q. This is what I don't understand. If the 6 owners have the ability to protect nonimpact glass 7 with shutters or plywood, at least in the 8 beginning, why would you be critical in any way of 9 the distributor or the manufacturer for selling 10 nonimpact glass? 11 MR. FLYNN: Object to the form. 12 A. Because they sold it or distributed it 13 to a project and they should have known where it 14 is. And if they sold it and understood that 15 impact glass or a shutter was there, it seems to 16 me the obligation is, we have this product but it 17 can only be used if you have the appropriate 18 hurricane shutters. 19 Q. Or plywood? 20 A. Well, that -- it depends on the window 21 of time. You can't use plywood. 22 Q. I apologize. I was trying to limit my 23 question to the time period when plywood could be 24 used, which I understood to be in the early 2000s? 25 MR. FLYNN: Object to the form.	Page 141 1 of committee that is charged with developing 2 standards or rules for window and door 3 manufacturers or distributors? 4 A. No, I have not sat on a board. 5 Q. In designing projects, is it common for 6 you to rely upon information provided to you by 7 the product manufacturer? 8 A. Yes. 9 Q. Is that because the product manufacturer 10 is the expert on its products? 11 A. No. It's because the product 12 manufacturer -- and if we use windows as an 13 example -- may tell you that a window has a 14 certain DP rating of the window tested being a 15 single unit. And what I have found in the printed 16 literature is that once you gang the windows 17 together, there are only a couple manufacturers 18 that then provide you a new DP rating, because the 19 rating is for the assembled product. So you can't 20 take a bunch of small products, gang them together 21 and expect to get the same DP rating. 22 Q. Do you know whether any of the EFCO 23 products were ganged together at Shipwatch? 24 A. No. I'm just giving you an example, 25 because yours was more hypothetical, of the

36 (Pages 138 to 141)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630

Page 142 1 manufacturer. 2 Q. Were you aware that Sutton-Kennerly & 3 Associates attempted to reuse the EFCO products 4 that are installed at Shipwatch as part of its 5 redesign? 6 A. No. 7 Q. Is that significant to you in any way? 8 A. I don't know all the details about it. 9 I would have to know more to answer your question. 10 MR. KELLY: All right. I'm going to let 11 some of these other folks ask some questions. 12 Thanks for your time. 13 MR. FLYNN: Do you want to take a couple 14 minutes? 15 (The deposition went off the record.) 16 EXAMINATION 17 BY MR. WINTON: 18 Q. Mr. Sherratt, we've met before, but for 19 the benefit of the record, my name is Tyler 20 Winton. I work at Carlock, Copeland, and I'm here 21 on behalf of Sisroy Engineering and Bob Sisroy. 22 I know you're obviously familiar with my client, 23 and I listened to some of your testimony before 24 regarding documents that you have from Mr. Sisroy 25 relative to this matter and some of your opinions.	Page 144 1 Q. I think that was in a -- I wrote it 2 down, but it was in a June or July letter, July 3 10th, 2006. Could you pull that back up and could 4 we mark that as an exhibit? If you think it's 5 going to take too long to look for it, I will try 6 to track it down when some other folks ask you 7 questions. 8 A. Why don't you go ahead and ask and I'll 9 keep looking for it. 10 Q. Also, I thought I heard you talking 11 about the lack of design drawings in this case. 12 Are you blaming or criticizing Mr. Sisroy because 13 there's not a set of design plans for the 14 renovation work that was performed out at 15 Shipwatch? 16 A. As I read the building code, there needs 17 to be an appropriate set of plans and specs -- 18 specs could be on the plans -- for any 19 construction work. 20 Q. That's any construction work? 21 A. Well, short of doing a doghouse or 22 something like that. But to keep it in 23 perspective, a project like this. And if you look 24 at what the building code says in the first 25 chapter, it talks about specific details at
Page 143 1 You mentioned at one point that you read 2 something where Mr. Sisroy called for copper pan 3 flashing to be installed at aluminum sliding 4 doors; is that correct? 5 A. Yes. 6 Q. And you noted that that would be an 7 issue if it was installed; is that correct? 8 A. The two products need to be isolated. 9 You could still use the copper. The copper should 10 not be in contact with the concrete, nor should it 11 be in contact with the aluminum. But there are 12 methods to isolate at those joints, meaning the 13 materials. 14 Q. Have you ever seen -- what are those 15 methods, just real quickly? 16 A. Well, one, you could take the 17 waterproofing and roll it over the top or 18 underneath where the door is going to be. That 19 would isolate you from the concrete. And you 20 could use a rubberized product to isolate metal to 21 metal. 22 Q. All right. Have you ever seen the 23 application of copper pan flashing and at an 24 aluminum window door or slider? 25 A. Yes.	Page 145 1 dissimilar materials or intersections of different 2 materials. 3 Q. And what building code are you referring 4 to? 5 A. The 2000 and 2003. And then as you come 6 forward, the same terminology is in the subsequent 7 codes. 8 Q. The 2000 and 2003 IBCs? 9 A. Yes. When I say code, I'm always 10 referencing the IBC. 11 Q. I understand that now. 12 A. This is that document you asked about. 13 Q. Do you mind if we mark this as an 14 exhibit to your deposition and have a copy made? 15 A. Can you make a copy and give it back to 16 me now; I mean before we -- 17 Q. I bet we can. I don't have Mr. Cobb's 18 copying skills. 19 MR. WINTON: Let's do that. 20 (Deposition Exhibit No. 184, 7/10/06 21 letter from Sisroy Engineering to Linda Jernigan, 22 was marked for identification.) 23 BY MR. WINTON: 24 Q. Is it okay if I put this sticker on it? 25 A. Yeah. Just give me a copy back. I'd

37 (Pages 142 to 145)

CAROLINA REPORTING

843.832.0801 * www.carolina-reporting.com

Electronically signed by Eve Wilbanks (101-177-349-6970)

49b97a82-0360-48b0-a0f8-af7173840630